



COUNCIL CHAMBERS
17555 PEAK AVENUE MORGAN HILL CALIFORNIA 95037

COUNCIL MEMBERS

Dennis Kennedy, Mayor
Mark Grzan, Mayor Pro Tempore
Larry Carr, Council Member
Greg Sellers, Council Member
Steve Tate, Council Member

REDEVELOPMENT AGENCY

Dennis Kennedy, Chair
Mark Grzan, Vice-Chair
Larry Carr, Agency Member
Greg Sellers, Agency Member
Steve Tate, Agency Member

WEDNESDAY, MARCH 1, 2006

AGENDA

JOINT MEETING

CITY COUNCIL SPECIAL AND REGULAR MEETING

and

REDEVELOPMENT AGENCY SPECIAL MEETING

6:00 P.M.

A Special Meeting of the City Council and Redevelopment Agency is Called at 6:00 P.M. for the Purpose of Conducting Closed Sessions; and a Special Redevelopment Agency Meeting is called at 7:00 P.M. for Conducting Redevelopment Agency Business.

Dennis Kennedy, Mayor/Chairman

CALL TO ORDER

(Mayor/Chairperson Kennedy)

ROLL CALL ATTENDANCE

(City Clerk/Agency Secretary Torrez)

DECLARATION OF POSTING OF AGENDA

Per Government Code 54954.2

(City Clerk/Agency Secretary Torrez)

6:00 P.M.

City Council Action and Redevelopment Agency Action

CLOSED SESSION:

1.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Authority: Pursuant to Government Code 54956.9(a)
Case Name: In Re Gregory T. Hemming and Kimberley L. Hemming
Case Number: United States Bankruptcy Court, Eastern District of California,
Case No. 2004-20318-A-7

2.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code Section 54956.9(a)
Case Name: Berkman v. City of Morgan Hill et al.
Case Number: Santa Clara County Superior Court, 1-04-CV-031021

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

RECONVENE

CLOSED SESSION ANNOUNCEMENT

7:00 P.M.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORT

Council Member Sellers

CITY COUNCIL SUB-COMMITTEE REPORTS

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PUBLIC COMMENT

NOW IS THE TIME FOR COMMENTS FROM THE PUBLIC REGARDING ITEMS NOT ON THIS AGENDA.

(See notice attached to the end of this agenda.)

**PUBLIC COMMENTS ON ITEMS APPEARING ON THIS AGENDA WILL BE TAKEN AT THE TIME
THE ITEM IS ADDRESSED BY THE COUNCIL. PLEASE COMPLETE A SPEAKER CARD AND
PRESENT IT TO THE CITY CLERK.**

(See notice attached to the end of this agenda.)

PLEASE SUBMIT WRITTEN CORRESPONDENCE TO THE CITY CLERK/AGENCY SECRETARY. THE CITY CLERK/AGENCY SECRETARY WILL FORWARD CORRESPONDENCE TO THE CITY COUNCIL/REDEVELOPMENT AGENCY.

City Council Action

CONSENT CALENDAR:

ITEMS 1-14

The Consent Calendar may be acted upon with one motion, a second and the vote, by each respective Agency. The Consent Calendar items are of a routine or generally uncontested nature and may be acted upon with one motion. Pursuant to Section 5.1 of the City Council Rules of Conduct, any member of the Council or public may request to have an item pulled from the Consent Calendar to be acted upon individually.

Time Estimate

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Consent Calendar: 1 - 10 Minutes

1. [POLICY RECOMMENDATION REGARDING THE EARLY START OF CONSTRUCTION FOR PROJECTS AWARDED A BUILDING ALLOTMENT](#)9
Recommended Action(s): **Adopt** Council Policy to Allow Earlier Construction Starts for Residential Projects Awarded an RDCS Building Allotment.
2. [REPORT ON POSSIBLE BALLOT MEASURE TO AMEND MEASURE C FOR DOWNTOWN RESIDENTIAL AND MIXED USE PROJECTS](#)11
Recommended Action(s):
 1. **Receive** Information;
 2. **Direct** the Community and Economic Development Council Subcommittee to Continue Discussing the Possibility of a Measure for the November 2006 or Later Ballot; and
 3. **Report** Back to the City Council with a Status Report by July 2006.
3. [ACCEPT DEPOT STREET SEWER REPLACEMENT PROJECT](#)15
Recommended Action(s):
 1. **Accept** as Complete the Depot Street Sewer Replacement Project in the Final Amount of \$357,310; and
 2. **Direct** the City Clerk to File the Notice of Completion with the County Recorder's Office.
4. [APPROVE DISADVANTAGED BUSINESS ENTERPRISE \(DBE\) ANNUAL GOAL](#)17
Recommended Action(s): **Approve** the City's Disadvantaged Business Enterprise Annual Overall DBE Goal of 3.8% for the Federal Fiscal Year 2005/2006, Beginning on October 1, 2005 and Ending on September 30, 2006.
5. [FINAL MAP APPROVAL FOR MISSION RANCH PHASE 9A \(TRACT 9777\)](#)18
Recommended Action(s): **Authorize** the Recordation of the Final Map.
6. [APPROVAL OF \\$264,270 FOR INTERIOR FURNITURE FOR THE INDOOR RECREATION CENTER \(IRC\)](#)19
Recommended Action(s): **Authorize** the City Manager to Execute a Contract with Axiom II Business Interiors to Provide and Install the Selected Interior Furniture for the Indoor Recreation Center in an Amount not to exceed \$259,270 with a Contingency of \$5,000; Subject to Review and Approval by the City Attorney.

Time Estimate

Consent Calendar: 1 - 10 Minutes

Page

7. **PURCHASE OF POLICE DEPARTMENT MSO/PRISONER TRANSPORT VEHICLE**.....20
Recommended Action(s): **Authorize** Vehicle Purchase and Police Equipment Build-Out Through The Ford Store Morgan Hill for the Identified Vehicle for a Total Cost of \$40,030.02.
8. **ADOPT ORDINANCE NO. 1757, NEW SERIES**.....21
Recommended Action(s): **Waive** the Reading, and **Adopt** Ordinance No. 1757, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO DEVELOPMENT AGREEMENT, DA 03-11 TO INCORPORATE CHANGES IN THE SCHEDULE AND PROCESS TO CONSTRUCT THE 3RD BELOW MARKET RATE (BMR) UNIT FOR APPLICATION MP 02-07: CORY-SAN PEDRO PARTNERS. (APN 817-11-061)**
9. **ADOPT ORDINANCE NO. 1758, NEW SERIES**.....26
Recommended Action(s): **Waive** the Reading, and **Adopt** Ordinance No. 1758, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING A PRECISE DEVELOPMENT PLAN TO ALLOW FOR THE SHARED USE OF A 32 SQUARE FOOT MONUMENT SIGN TO BE LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF EAST DUNNE AVENUE AND SAN BENANCIO WAY. (APN 817-11-013)**
10. **ADOPT ORDINANCE NO. 1759, NEW SERIES**.....31
Recommended Action(s): **Waive** the Reading, and **Adopt** Ordinance No. 1759, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH AN R-2 3,500/RESIDENTIAL PLANNED DEVELOPMENT ON A .298 ACRE SITE LOCATED ON THE SOUTH SIDE OF SAN PEDRO AVENUE AT THE EASTERLY CORNER OF CORY LANE. (APN 817-59-052)**
11. **ADOPT ORDINANCE NO. 1760, NEW SERIES**.....35
Recommended Action(s): **Waive** the Reading, and **Adopt** Ordinance No. 1760, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA-05-12 SAN PEDRO-AHMADI FOR APPLICATION MMC-04-06: SAN PEDRO-AHMADI. (APN 817-59-052)**
12. **ADOPT ORDINANCE NO. 1761, NEW SERIES**.....38
Recommended Action(s): **Waive** the Reading, and **Adopt** Ordinance No. 1761, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 3.56 [DEVELOPMENT IMPACT MITIGATION FEES] OF TITLE 3 [REVENUE AND FINANCE] BY ADDING SECTION 3.56.065 [EXEMPTION FROM FEE INCREASE] AND SECTION 3.56.095 [DEFERRAL OF PAYMENT OF SEWER AND TRAFFIC IMPACT FEES]; AMENDING CHAPTER 12.02 [STREET AND SIDEWALK DEVELOPMENT] OF TITLE 12 [STREETS, SIDEWALKS, AND PUBLIC PLACES] BY ADDING SECTION 12.02.115 [DEFERRAL OF UNDERGROUND UTILITY IN LIEU FEE]; AND REPEALING CHAPTER 3.44 [DEVELOPMENT IMPACT FEES] OF TITLE 3 [REVENUE AND FINANCE].**

Time Estimate **Page**
Consent Calendar: 1 - 10 Minutes

13. [**ADOPT ORDINANCE NO. 1762, NEW SERIES**](#)42
Recommended Action(s): **Waive** the Reading, and **Adopt** Ordinance No. 1762, New Series, and **Declare**
That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title
and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF MORGAN HILL AMENDING SECTION 2.04.010 OF THE MUNICIPAL CODE,
REGARDING THE TIME AND LOCATION OF THE COUNCIL MEETINGS.**
14. [**APPROVE JOINT CITY COUNCIL SPECIAL & REGULAR AND REDEVELOPMENT
AGENCY SPECIAL MEETING MINUTES FOR FEBRUARY 15, 2006**](#)44

Redevelopment Agency Action

CONSENT CALENDAR:

ITEM 15

Time Estimate **Page**
Consent Calendar: 1 - 10 Minutes

15. [**APPROVAL OF \\$39,080 FOR INTERIOR DESIGN SERVICES TO SELECT INTERIOR
FIXTURES AND FURNITURE FOR THE NEW LIBRARY**](#)75
Recommended Action(s): **Authorize** the Executive Director to Execute a Consultant Agreement with
RMW Architecture & Interiors to Provide Interior Design Services Necessary to Select the Public and Staff
Furniture and Fabrics for the New Morgan Hill Library in an Amount Not to Exceed \$39,080; Subject to
Review and Approval by Agency Counsel.

City Council Action (Continued)

CONSENT CALENDAR:

ITEM 16

Time Estimate **Page**
Consent Calendar: 1 - 10 Minutes

16. [**ACCEPT 2005-2006 SIDEWALK, CURB AND GUTTER REMOVAL AND REPLACEMENT
PROJECT**](#)76
Recommended Action(s):
1. **Accept** as Complete the 2005-2006 Sidewalk, Curb and Gutter Removal and Replacement Project in
the Final Amount of \$60,446; and
2. **Direct** the City Clerk to File the Notice of Completion with the County Recorder's Office.

City Council Action

PUBLIC HEARINGS:

	Time Estimate		Page
17.	5 Minutes	<u>ZONING ADMENDMENT, ZA-05-28: OAKHILL-SPERA</u>	78
		Public Hearing Opened.	
		Please Limit Your Remarks to 3 Minutes. Public Hearing Closed	
		Council Discussion.	
		Action- <u>Motion to Waive</u> the Reading in Full of Ordinance Amending Municipal	
		Code Section 18.56.150.	
		Action- <u>Motion to Introduce</u> Ordinance by Title Only. (Roll Call Vote)	

City Council Action

OTHER BUSINESS:

	Time Estimate		Page
18.	20 Minutes	<u>GRANT "THIRD YEAR" RESIDENTIAL BUILDING ALLOTMENTS AND DISCUSS STATUS OF A FALL 2006 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDOS) COMPETITION</u>	81
		<u>Recommended Action(s):</u>	
		1. <u>Adopt</u> Resolution Approving Third Year Residential Building Allotments into Fiscal Year 2009-2010; and	
		2. <u>Determine</u> that there will be No Fall 2006 RDOS Competition, and that Awards of 2009-2010 Allotments to On-Going Open/Market Projects will be Considered by the Council in June 2006.	
19.	20 Minutes	<u>DEVELOP CITY COUNCIL POSITION REGARDING PROPOSED VALLEY TRANSPORTATION AUTHORITY (VTA) QUARTER-CENT SALES TAX TO SUPPORT LONG-TERM TRANSIT CIP EXPENDITURE PLAN</u> (Continued from 2/22/06).....	86
		<u>Recommended Action(s):</u>	
		1. By Motion, <u>Determine</u> Whether the City's Position will be to Support or Not to Support the Proposed Quarter-Cent Sales Tax Measure; and	
		2. <u>Discuss</u> Recommended VTA Quarter-Cent Sales Tax Scenario Expenditure Plan, and <u>Provide Direction</u> to the City's VTA Board Representative Regarding the Scheduled March 2, 2006 VTA Board of Directors Vote on the Proposed Plan.	
20.	15 Minutes	<u>BALLOT MEASURE FOR A JUNE 6, 2006 SPECIAL ELECTION</u>	87
		<u>Recommended Action(s):</u>	
		1. <u>Review</u> the Issues Regarding the Potential Removal of the Restriction of Grocery Supermarkets at Cochrane Plaza in Morgan Hill; and	
		2. <u>Direct</u> Staff Regarding Calling for a Special Election.	

Should the Council Support Calling for a June 6, 2006 Special Election, then:

3. **Approve** Negative Declaration;
4. **Adopt** Resolution Calling for a June 6, 2006 Special Election;
5. **Adopt** Resolution Requesting Consolidation of the June 6, 2006 Special Election;
6. **Adopt** Resolution Regarding Written Arguments; and
7. **Adopt** Resolution Regarding Rebuttals.

OTHER BUSINESS:

	Time Estimate		Page
21.	3 Minutes	<u>MARCH 15, 2006 CITY COUNCIL MEETING</u>	91
		<u>Recommended Action(s): Provide Direction</u> Regarding March 15, 2006 City Council Meeting.	

FUTURE COUNCIL-INITIATED AGENDA ITEMS:

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

ADJOURNMENT

PUBLIC COMMENTS ON ITEMS NOT APPEARING ON AGENDA

Following the opening of Council/Agency business, the public may present comments on items *NOT* appearing on the agenda that are within the Council's/Agency's jurisdiction. Should your comments require Council/Agency action, your request will be placed on the next appropriate agenda. No Council/Agency discussion or action may be taken until your item appears on a future agenda. You may contact the City Clerk/Agency Secretary for specific time and dates. This procedure is in compliance with the California Public Meeting Law (Brown Act) G.C. 54950.5. Please limit your presentation to three (3) minutes.

PUBLIC COMMENTS ON ITEMS APPEARING ON AGENDA

The Morgan Hill City Council/Redevelopment Agency welcomes comments from all individuals on any agenda item being considered by the City Council/Redevelopment Agency. Please complete a Speaker Card and present it to the City Clerk/Agency Secretary. This will assist the Council/Agency Members in hearing your comments at the appropriate time. Speaker cards are available on the table in the foyer of the Council Chambers. In accordance with Government Code 54953.3 it is not a requirement to fill out a speaker card in order to speak to the Council/Agency. However, it is very helpful to the Council/Agency if speaker cards are submitted. As your name is called by the Mayor/Chairman, please walk to the podium and speak directly into the microphone. Clearly state your name and address and then proceed to comment on the agenda item. In the interest of brevity and timeliness and to ensure the participation of all those desiring an opportunity to speak, comments presented to the City Council/Agency Commission are limited to three minutes. We appreciate your cooperation.

NOTICE

AMERICANS WITH DISABILITIES ACT (ADA)

The City of Morgan Hill complies with the Americans with Disability Act (ADA) and will provide reasonable accommodation to individuals with disabilities to ensure equal access to all facilities, programs and services offered by the City. If you need special assistance to access the meeting room or to otherwise participate at this meeting, including auxiliary aids or services, please contact the Office of the City Clerk/Agency Secretary at City Hall, 17555 Peak Avenue or call 779-7259 or (Hearing Impaired only - TDD 776-7381) to request accommodation. Please make your request at least 48 hours prior to the meeting to enable staff to implement reasonable arrangements to assure accessibility to the meeting.

If assistance is needed regarding any item appearing on the City Council/Agency Commission agenda, please contact the Office of the City Clerk/Agency Secretary at City Hall, 17555 Peak Avenue or call 779-7259 or (Hearing Impaired only - TDD 776-7381) to request accommodation.

NOTICE

Notice is given, pursuant to Government Code Section 65009, that any challenge of Public Hearing Agenda items in court, may be limited to raising only those issues raised by you or on your behalf at the Public Hearing described in this notice, or in written correspondence delivered to the City Council/Agency Commission at, or prior to the Public Hearing on these matters.

NOTICE

The time within which judicial review must be sought of the action by the City Council/Agency Commission which acted upon any matter appearing on this agenda is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure.



CITY COUNCIL STAFF REPORT

MEETING DATE: *March 1, 2006*

POLICY RECOMMENDATION REGARDING THE EARLY START OF CONSTRUCTION FOR PROJECTS AWARDED A BUILDING ALLOTMENT.

RECOMMENDED ACTION(S):

Motion to adopt a policy to allow earlier construction starts for residential projects awarded a RDCS building allotment.

EXECUTIVE SUMMARY: Section 18.78.020 of the Measure C Ordinance provides that no residential development shall be undertaken, and no discretionary permit or building permit shall be issued in the city, unless a development allotment has been obtained in accordance with the provisions of the general plan and the residential development control system (RDCS). Under the prior Measure P Ordinance, residential building allotments had to be awarded by April 1 in the prior fiscal year, no less than 3 months prior to the start of the fiscal year. Under Measure P, the City Attorney's Office issued an opinion that as long as the development allocation had first been obtained by April 1 that developers did not have to wait until the start of the fiscal year to begin construction. An early start of construction beginning on April 1 was possible as long as the units were not completed and occupied until after the start of the fiscal year in which the allotments must be used.

Under Section 18.78.125D of the current Measure C Ordinance, development allotments must be issued no less than 16 months prior to the start of the fiscal year in which the allotments must be used. The additional lead time was added to allow developers time to complete their entitlement process and still have a full year in which to commence construction of their project. When Measure C was approved by the voters, staff, based on the prior City Attorney opinion, advised developers that they could commence construction beginning March 1 in the prior fiscal year. The March 1 date is 16 months prior to the start of the fiscal year in which the allocations must be used. However, given that development allocations are actually awarded by that date in the prior year, there is no reason not to move up the date to allow earlier construction. An earlier start of construction is possible as long as the units are not completed and occupied until after the start of the fiscal year of in which the allocations must be used. The advantage of starting earlier is that it allows dwelling units to be completed sooner, at the beginning of the fiscal year instead of toward the end of the fiscal year of the allocation. In theory, a project, absent of one day, could complete a project a year earlier if the developer is allowed an earlier start of construction. Actual timing of when construction could begin would depend on how long the entitlement process takes and the complexity of the project in terms of how long it would take to build. Such a policy would allow projects in the downtown to be completed sooner, as desired by the City Council.

At their February 14, 2006 meeting, the Planning Commission voted 5-2 to recommend the City Council adopt a policy allowing earlier construction starts. Rather than establishing an earlier fixed start day, September 1 for example, the Commission recommends that earlier start dates be allowed to vary, based on the complexity of the project (type of construction, etc.). Each early start date would be determined by the developer subject to Planning Commission approval of the construction schedule. Commissioner's Benich and Davenport voted against the recommendation, not because they opposed the earlier start concept, but because of the inclusion of the construction schedule into the project's Development Agreement, requiring amendment to the Agreement if the construction schedule needs to be extended. Staff believes this concern can be addressed by establishing a range for the start and completion dates in the construction schedule. The recommended policy is attached.

FISCAL IMPACT: No budget adjustment required.

Agenda Item #1

Prepared By:

Planning Manager

Approved By:

**Community
Development Director**

Submitted By:

City Manager

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP-

**SUBJECT: EARLY START OF CONSRUCTION FOR RESIDENTIAL
PROJECTS AWARDED A BUILDING ALLOTMENT**

EFFECTIVE DATE: March 1, 2006

INTRODUCTION:

Under Section 18.78.125D of the Residential Development Control System (Measure C) Ordinance, development allotments must be issued no less than 16 months prior to the start of the fiscal year in which the allotments must be used. The lead time was added under Measure C to allow developers time to complete their entitlement process and still have a full year in which to commence construction of their project. Past policy required developers to wait until March 1 in the prior fiscal year before starting construction. Given that development allocations are actually awarded by that date in the prior year, an earlier start of construction date is possible as long as the units are not completed and occupied until after the start of the fiscal year of in which the allocations must be used. The advantage of starting earlier is that it allows dwelling units to be completed sooner, at the beginning of the fiscal year instead of toward the end of the fiscal year of the allocation.

POLICY:

It shall be the policy of the City of Morgan to allow residential projects awarded a building allocation under Section 18.78.125 of the Morgan Hill Municipal Code, the Residential Development Control System, to start construction as determined by the developer, subject to Planning Commission approval of the construction schedule. Construction schedules will vary on how long the entitlement process would take and the complexity of the project (type of construction, etc.) in terms of how long it would take to build. The construction schedule shall be incorporated into the project development agreement to ensure that the dwelling units are not completed before the start of the fiscal year in which the allocations must be used.

This policy shall remain in effect until modified by the City Council.

APPROVED:

DENNIS KENNEDY, MAYOR



CITY COUNCIL STAFF REPORT

MEETING DATE: March 1, 2006

Agenda Item # 2

Prepared By:

**Community
Development
Director**

Submitted By:

City Manager

REPORT ON POSSIBLE BALLOT MEASURE TO AMEND MEASURE C FOR DOWNTOWN RESIDENTIAL AND MIXED USE PROJECTS

RECOMMENDED ACTION(S): Receive Information and Direct Community and Economic Development Council Subcommittee to continue discussing the possibility of a measure for the November 2006 or later ballot, and to report back to the City Council with a status report by July 2006.

EXECUTIVE SUMMARY: In December 2005 the City Council requested that the Community & Economic Development Council Subcommittee (CED Subcommittee) consider the idea of a possible ballot measure to either exempt downtown from or change how Measure C (the Residential Density Control System ordinance) applies to downtown, for residential and mixed use projects. The CED Subcommittee was to report back to the full Council by March 1, 2006.

On January 13, 2006 the CED Subcommittee held a Workshop, attended by many members of the development community and persons interested in Downtown. Minutes of the meeting are attached. It was concluded at that meeting that, as CEQA would need to be completed by March 1, 2006 for any possible measure for the June 2006 ballot, there was no way to decide on a strategy for how to treat downtown development, develop ballot measure language, and complete CEQA review (Negative Declaration or Environmental Impact Report) by March 1, 2006. Therefore, a June ballot measure is considered infeasible. The CED Subcommittee decided to wait to schedule further discussion of a possible ballot measure until after a) the RDSCS competition was completed by the Planning Commission; and b) the CED Subcommittee was able to carry out a review of the Downtown Plan. A Downtown Plan Status Memo was prepared and made available at the February 17, 2006 CED Subcommittee meeting.

Now that it is known which downtown projects have received allotments (a total of 349 units), the CED Subcommittee plans to continue its review of the Downtown Plan, and explore whether or not a ballot measure would be advisable, given the vision and goals for downtown, and the remaining development potential in the downtown area.

FISCAL/RESOURCE IMPACT: None.

**DRAFT MINUTES
OF SPECIAL MEETING:
WORKSHOP TO DISCUSS POSSIBLE BALLOT MEASURE
REGARDING DOWNTOWN HOUSING UNITS**

CALL TO ORDER The Workshop was called to order at 8:10 AM. Those present included Councilmembers Larry Carr and Greg Sellers; and staffpersons Kathy Molloy Previsich, Jim Rowe, and Garrett Toy.

Members of the public who signed-in included David Clink, Andrew Latala, Gary Walton, Ted Downs, Ralph Lyle, Scott Schilling, Daniel Ehrler, Mike Davenport, Maureen Upton, John Telfer, Don Lapidus, and Craig Miott.

DECLARATION OF POSTING OF AGENDA It was declared that the agenda was posted in compliance with Government Code 54954.2

PUBLIC COMMENTS: None.

APPROVAL OF MINUTES: None.

BUSINESS:

1. **Discuss Information in January 6, 2006 Letter to Applicants, Developers and Interested Persons regarding current “RDCS” Downtown, Vertical Mixed Use and Affordable competitions; Process for awarding 2008/09 and 2009/10 allotments; Possibility of ballot measure to facilitate downtown housing projects; and Process for determining schedule for future competition(s)**
2. **Discuss issues related to a possible Ballot Measure to modify Measure C provisions applicable to Downtown and Vertical Mixed Use Projects, so that downtown development may occur sooner**

There was wide-ranging discussion of Measure C and Downtown, including the status of implementation of the Downtown Plan. Various factors to be considered when designing a possible ballot measure include whether to still hold a competition, whether to identify minimum design standards in lieu of a competition, to define the boundaries of the “downtown”, whether the ballot measure would raise the population cap to accommodate some level of downtown housing, and for what period of time or number of units would the special accommodation exist.

It was pointed out that a good projection of just how many more housing units would be desired and expected downtown, given desired zoning, should be calculated.

Staff indicated that CEQA would need to be completed before the time that the City would be able to place a measure on the ballot, and there would not be sufficient time to complete CEQA for a June 2006 ballot, and even November 2006 could be tight, depending on how the project is defined.

Gary Walton offered his opinion that, if the current window of opportunity hadn't been provided under a downtown set-aside, he believes the proposed downtown projects would have been proposed over a longer period of time. The construction period will have impacts on downtown businesses. He does not think that downtown projects should have to go through the same Measure C competitive process, as "smart growth" projects should be rewarded. He expressed concern that the Downtown Plan is not an adequate strategic plan: it should state the vision, include a strategic plan, encourage public/private partnership, and make the right things easy to do. He believes that 200,000 square feet of commercial development is needed downtown.

Others commented that a strategic plan was needed, and implementation of downtown projects should be exempt from Measure C because it's not good to have downtown projects competing against each other – they should all be allowed to proceed if they meet community standards.

Subcommittee members agreed that it would be a good idea to revisit the Downtown Plan to examine its framework and refine/update as needed. The allowable density for downtown needs to be looked at.

Ralph Lyle stated that the market absorption issue should be considered for downtown housing. He pointed out that the Planning Commission will not be able to fully allocate all of the downtown projects that have applied, even if they all pass, because there are not enough allotments available. Also, Measure C requires that one-third of all allotments awarded be detached single family residential. He is not in favor of exempting downtown entirely, and he is "so so" on the ballot measure question, as he's not sure that it's really needed and this has to be examined very closely. We don't want unintended consequences. There might be some downtown matters that could be addressed without triggering CEQA.

Regarding whether or not there will be RCDS Fall 2006 competitions, Jim Rowe pointed out that there is no NEED for a competition, as all of the 2008/09 allotments will have been awarded through this competition. There had only been 11 Open Market allotments, 4 Small Project, and 3 Micro allotments that would have been available, and the Council directed that those be re-directed to the Downtown competition.

The Subcommittee members decided that the matters of a possible ballot measure and whether or not there will be Fall 2006 competition(s) should be scheduled for further Subcommittee discussion after the Planning Commission takes action on February 14, 2006 to award allotments.

Scott Schilling commented that he did believe that the community would support a ballot measure for downtown housing – perhaps a certain number of units per year for so many years, or some set total number. He believes the project should be exempted from Measure C but still be required to be "competitive" as far as achieving passing scores. Economic feasibility is a major factor for these types of downtown projects.

Maureen Upton commented that the absorption rate is a big consideration: 400 units all at once may be a negative for downtown if they're vacant. She supports a 10-year plan for downtown housing/mixed use projects, based on a strategic plan for downtown growth. There should be a competition of some sort to ensure that quality standards and criteria are met by the projects. The current process feels rushed, and not based on enough strategic planning. There is a need to finish Ongoing Open Market projects, so they cannot be abandoned in favor of downtown. The plan for downtown must include retail and amenities that downtown and city residents want, and this must be carefully planned.

Greg Sellers commented that this is a "chicken and egg" dilemma, because the retail and amenities need residents to support them. The City is trying to remove obstacles to downtown commercial development. If there is an RDA Plan Amendment, there will be more public funds to assist downtown.

Maureen Upton commented that perhaps Open Market projects outside of the downtown would have a defined way of contributing to downtown improvements as a way of obtaining points. Scott Schilling agreed that developers would like to get points for contributions to downtown. Jim Rowe indicated that the City does have such a list, and downtown improvements could be added to the list.

Maureen Upton indicated that there may be an opportunity to use the 2009/10 allotments for the Downtown set-aside and for On-going Open Market projects, and then develop a ballot measure for the post 09/10 downtown projects after a Master CEQA document is completed.

Greg Sellers indicated that he would report to the full Council that a June ballot measure would not be possible due to the need to complete CEQA prior by March, and that CEQA would need to be done by August for a November measure. He indicated that the CED Subcommittee would hold a follow-up workshop on this matter after the Planning Commission's February 14th meeting where it awards allotments. Additionally, he believed the CED Subcommittee should begin a review of the Downtown Plan. Larry Carr agreed, saying that the City and downtown interests should take a step back and evaluate whether we have a Plan and a strategy that will achieve the vision.

Ralph Lyle stated that the City needed to focus on how to get commercial space downtown, including how much and where it should be. Larry Carr stated that we should be thinking of how to use the residential allotment process as an incentive to get the commercial space. Maureen Upton commented that perhaps there should be a required ratio of commercial to residential space for downtown projects. Craig Miott commented that if the City tries to force retail, that could result in excess space that can't be leased. There needs to be a balance and a recognition of market realities. Greg Sellers commented that he did not believe there needed to be the 200,000 square feet that Gary Walton suggested, but we need continuity and the right kind of retail. He believes that we need a higher-end commercial structure available to accommodate higher-end and national retailers, who will only locate in certain kinds of buildings.

Mike Davenport added that we should take a step back and re-visit the vision, analyze Measure C regarding any constraints it imposes, educate the community, and go from there. Craig Miott stated that could be beneficial to have a third party expert come in and analyze the downtown plan regarding housing projections, and relate that to how much commercial space could be supported, and what types of commercial are lacking.

The Subcommittee members agreed that it is a good idea to review the Downtown Plan and determine whether it needs to be updated. Also, it is necessary to analyze the effect of all of the proposed downtown housing on schools. The downtown units will be smaller with smaller household sizes and fewer kids, so student generation needs to be calculated correctly.

The Workshop ended with the Subcommittee indicating that its February 17th Subcommittee meeting agenda will include further discussion of the ballot measure idea.

3. Depot Street Improvements

Subcommittee members met with Public Works staff and owners of the martial arts business at Third St and Depot Street, to refine the street section near that business. A satisfactory solution was presented by Public Works and supported by the business owners and subcommittee members.

ADJOURNMENT The meeting adjourned at 10:05 AM.



CITY COUNCIL STAFF REPORT

MEETING DATE: March 1, 2006

ACCEPT DEPOT STREET SEWER REPLACEMENT PROJECT

RECOMMENDED ACTION(S):

1. Accept as complete the Depot Street Sewer Replacement Project in the final amount of \$357,310.
2. Direct the City Clerk to file the attached Notice of Completion with the County Recorder's office.

EXECUTIVE SUMMARY:

The contract for the Depot Street Sewer Replacement Project was awarded to D'Arcy and Harty Construction, Inc., by the City Council at their October 19, 2005 meeting, in the amount of \$382,940. The project resulted in the installation of 1700 LF of new 8" sewer pipe on Depot Street from Main Avenue to 5th Street.

The work has been completed in accordance with the plans and specifications.

FISCAL/RESOURCE IMPACT:

This project was budgeted in the 2005-2006 Capital Improvements Program budget under Sanitary Sewer Rehabilitation, Project #302093. The allocated project construction cost including a 10% contingency was \$421,190. The contract was awarded in the amount of \$382,940 and the final contract price is \$357,310.

Agenda Item #3

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

Record at the request of
and when recorded mail to:

CITY OF MORGAN HILL
CITY CLERK
17555 Peak Avenue
Morgan Hill, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 27383

NOTICE OF COMPLETION
CITY OF MORGAN HILL
DEPOT STREET SEWER REPLACEMENT PROJECT

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the Civil Code of the State of California, that the Director of Public Works of the City of Morgan Hill, California, on the 1st — day of March, 2006, did file with the City Clerk of said City, the contract for performing work which was heretofore awarded to D'Arcy and Harty Construction, Inc., on October 19, 2005, in accordance with the plans and specifications for said work filed with the City Clerk and approved by the City Council of said City.

That said improvements were substantially completed on January 25, 2006, accepted by the City Council on March 1, 2006, and that the name of the surety on the contractor's bond for labor and materials on said project is International Fidelity Insurance Company.

That said improvements consisted of the construction and installation of all items of work provided to be done in said contract, all as more particularly described in the plans and specifications therefor approved by the City Council of said City.

Name and address of Owner: City of Morgan Hill
17555 Peak Avenue
Morgan Hill, California

Dated: _____, 20__.

Jim Ashcraft, Director of Public Works

I certify under penalty of perjury that the foregoing is true and correct.

Irma Torrez, City Clerk
City of Morgan Hill, CA
Date:



CITY COUNCIL STAFF REPORT

MEETING DATE: MARCH 1, 2006

APPROVE DISADVANTAGED BUSINESS ENTERPRISE (DBE) ANNUAL GOAL

RECOMMENDED ACTION(S): Approve the City's Disadvantaged Business Enterprise Annual overall DBE goal of 3.8% for the Federal Fiscal Year 2005/2006, beginning on October 1, 2005 and ending on September 30, 2006.

EXECUTIVE SUMMARY: The City of Morgan Hill has established a DBE program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City of Morgan Hill has and will continue to receive Federal financial assistance from the DOT, and as a condition of receiving this assistance the City of Morgan Hill must assure compliance with 49 CFR Part 26.

For Fiscal Year 2002-2003, the City had no Federal projects that were accepted by Council which included DBE goals. For Fiscal Year 2003-2004, City Council accepted three projects with a DBE goal requirement of 5.7%. They are; (1) Main/UPRR Crossing project achieving 2% DBE participation, (2) Monterey/UPRR Pedestrian Improvement project achieving 6% DBE participation, and (3) Butterfield Linear Park project achieving 66% DBE participation. For Fiscal Year 2004-2005, City Council awarded the Pedestrian Crossing contract with a 3% DBE goal, which exceeded the required minimum of 2.7%. In addition, the design contract for the Depot Street Beautification project achieved a DBE goal of 6%, which also exceeded the required minimum of 2.7%. For Fiscal Year 2005-2006, the City anticipates two projects under contract with DBE goals, the construction of Depot Street and the Pavement Resurfacing project.

Title 49 of the Code of Federal Regulations Part 26, and as described in Caltrans' *Local Assistance Procedures Manual*, establishes policies that the City used to set an overall DBE goal of 3.8%. To establish the base figure, the City of Morgan Hill has elected to utilize the Caltrans DBE Directory of certified firms per NAICS codes, filtered to represent only DBE firms within the City of Morgan Hill's relevant market area. The County Census Bureau Data, within the same geographical market area was used to calculate the total number of businesses for the same NAICS codes.

The City of Morgan Hill published a Public Notice in the Morgan Hill Times, Nuevo Mundo (Spanish language) newspapers and the Daily Construction Service publication, announcing the City of Morgan Hill's proposed overall annual goals for the FY 2005-2006 contracts assisted by Fair Practices Act. Such Notice informed the public that the proposed goals and their rationale were available for inspection at the City of Morgan Hill during normal business hours for 30 days following the date of the Public Notice (Jan. 10, 2006). Also, the notice informed the public that the City of Morgan Hill and FHWA accepted comments on the goals for 45 days from the date of the Public Notice. No comments were received during the review periods.

FISCAL / RESOURCE IMPACT: None

Agenda Item # 4

Prepared By:

Associate Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: MARCH 1, 2006

FINAL MAP APPROVAL FOR MISSION RANCH PHASE 9A (TRACT 9777)

RECOMMENDED ACTION(S):

Authorize the recordation of the final map.

EXECUTIVE SUMMARY:

Tract 9777 is a 17 lot subdivision located on the southeast corner of Cochrane Road and Peet Road within the Mission Ranch development (see attached location map). The developer has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on July 27, 2004.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provision with a Title Company for the recordation of the Final Map.

FISCAL/RESOURCE IMPACT:

Development review for this project is from development processing fees.

Agenda Item # 5

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: March 1, 2006

APPROVAL OF \$264,270 FOR INTERIOR FURNITURE FOR THE INDOOR RECREATION CENTER.

RECOMMENDED ACTION(S):

Authorize City Manager to execute a contract with Axiom II Business Interiors to provide and install the selected interior furniture for the Indoor Recreation Center in an amount not-to-exceed \$259,270 with a contingency of \$5,000.

EXECUTIVE SUMMARY:

Staff worked with Noll & Tam Architects alongside Ratcliff architects to select appropriate interior furniture for the indoor recreation center. Ratcliff documented a furniture specification bid package for the City's use. Staff put the furniture bid documents out for public bid and received four bids for the furniture. Two of the bidders did not include all the furniture specified. Of the two firms that bid the entire package, the bid difference was approximately 9%. The bid results were as follows:

M.G. West -	\$273,845.01 – No Exclusions
Axiom II Business Interiors -	\$259,270.00 – No Exclusions
Hogue & Assoc. -	\$200,948.23 – Excluded Herman Miller Product with a \$77,392.64 add for Steelcase & Vecta Product
KBM Workspace -	\$197,087.00 – Excluded Herman Miller, Steelcase & Vecta Product.

Staff interviewed the apparent low bidder, Axiom II Business Interiors and recommends proceeding with a contract for \$259,270 for the interior furniture with a contingency of \$5,000.

FISCAL IMPACT:

There is no fiscal impact to the project. The contract amount is within the established budget.

Agenda Item # 6

Prepared By:

Sr. Project Manager

Approved By:

**Special Assistant to the
City Manager**

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: March 1, 2006

PURCHASE OF POLICE DEPARTMENT MSO/PRISONER TRANSPORT VEHICLE

RECOMMENDED ACTION(S):

Authorize vehicle purchase and police equipment build out through The Ford Store Morgan Hill for the vehicle identified in this report for a total cost of \$40,030.02.

EXECUTIVE SUMMARY:

On January 18, 2006, Council approved the 2005/2006 Spending Plan for S.L.E.S.F. The MSO/Prisoner Transport Vehicle and build out for \$50,000 is a part of the S.L.E.S.F. Plan.

In 1996 the City applied for and received a Ford Motor Company Fleet Identification Number (FIN). The FIN grants the City a standard government fleet price (discount) set by Ford Motor Company on any vehicle purchased at any dealership. Because the Police Department missed the cutoff date to purchase a 2006 Ford Van through the State bid this year, The Ford Store Morgan Hill used our FIN and in addition, applied for and received a special fleet concession available to municipalities not using State pricing. This concession allows us to receive the benefit of a government discount when a model has not been bid by the State. It should also be noted that The Ford Store was able to beat the listed price through the state bid. A third discount was received from the owner of The Ford Store Morgan Hill when he adjusted the final price.

Informal bids from Downtown Ford and Bob Lynch Ford were higher than the bid from The Ford Store. Section 3.04.150 MHMC allows that the City council may award a purchase without a competitive bid, "upon a determination that competitive bids upon notice would not be likely to result in a lower price to the city from a responsible bidder, or would cause unnecessary expense or delay under the circumstances".

The Ford Store	\$21,908.12 + equipment & build out (\$18,121.90) = \$40,030.02.
Bob Lynch Ford	\$22,500.00
Downtown Ford	\$22,875.89

The Ford Store is also extending us the courtesy of working with our current vendor (Emergency Vehicle Systems) at EVS's cost to install the equipment and graphics on the police vehicle. This is a savings in staff time and turn around time for the vehicle.

The Department is aware of budget constraints and has evaluated the needs in regard to adding to the vehicle fleet. Staff recommends authorization based upon the need to provide a safe and efficient level of service required in the community.

FISCAL IMPACT: The cost of this vehicle is offset through S.L.E.S.F. (COPS) fund transfer to the General Fund.

Agenda Item # 7

Prepared By:

**Jerry Neumayer
Police Sergeant**

Approved By:

Department Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: March 1, 2006

Agenda Item # 8

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1757, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO DEVELOPMENT AGREEMENT, DA 03-11 TO INCORPORATE CHANGES IN THE SCHEDULE AND PROCESS TO CONSTRUCT THE 3RD BELOW MARKET RATE (BMR) UNIT FOR APPLICATION MP 02-07: CORY-SAN PEDRO PARTNERS. (APN 817-11-061)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1757, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On February 15, 2006, the City Council Introduced Ordinance No. 1757, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1757, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO DEVELOPMENT AGREEMENT, DA 03-11 TO INCORPORATE CHANGES IN THE SCHEDULE AND PROCESS TO CONSTRUCT THE 3RD BELOW MARKET RATE (BMR) UNIT FOR APPLICATION MP 02-07: CORY-SAN PEDRO PARTNERS. (APN 817-11-061)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code, adopted Resolution No. 03-17a & b on May 27, 2003, adopted Resolution No. 04-35 and 04-36 on March 23, 2004, and awarded allotments to that certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP 02-07: Cory-San Pedro Partners	32 Single-Family Homes

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the Residential Development Agreement and Development Proposal approved by this ordinance are compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 9. MODIFICATION TO DEVELOPMENT AGREEMENT. The Council hereby approves a text amendment (Section 14 u i) as shown in the attached page 12.

SECTION 10. MODIFICATION TO DEVELOPMENT SCHEDULE. The Council hereby approves an amendment to the development schedule as attached in Exhibit B.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the Day of February 2006, and was finally adopted at a regular meeting of said Council on the Day of March 2006, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of March 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Page 12, Section 14 (u) (i) of Development Agreement:

(u) Property Owner agrees to include the following affordable housing features in the development:

- (i) The Property Owner shall provide at least three (3) of the units for participation in a Below Market Rate (BMR) for sale program approved by the Community Development Department. The BMR units shall be approved by the City of Morgan Hill Planning Commission and Site and Architectural Review process. One of the BMR units shall be under construction and the framing inspection passed prior to the issuance of the 10th building permit and framing inspection passed on the second unit prior to the issuance of the 23rd building permit ~~and framing inspection passed on the third unit prior to issuance of the 31st permit.~~ **and building permit and framing inspections passed on the 3rd unit prior to obtaining framing inspections on the 27th through the 32nd units and certificate of occupancy can not be obtained for the 27th through 32nd units until the 3rd BMR unit passes final inspection.**
- (ii) The Property Owner agrees to pay 20 percent of the per unit cost of the standard housing mitigation fee payable to the City of Morgan Hill prior to the issuance of the 15th building permit.
- (iii) Below Market Rate (BMR) purchasers shall be treated in the same manner as purchasers of non-BMR units. Developer, including Developer's company, employees, and/or agents) agrees to assist BMR purchasers with all phases of the sales transaction, including, but not limited to, the preparation of any and all documents necessary to complete the sale and representation by a licensed real estate agent/broker.
- (iv) Property Owner will provide the buyer(s) of the BMR unit(s) the same option to upgrade the materials in the BMR home as a market rate buyers would in the market rate homes. Property Owner will provide the same level of customer service to the BMR buyer as the market rate buyer.
 - 1. The Below Market Rate (BMR) Program Guidelines are hereby incorporated herein in full by this reference.
 - 3. Exterior trim entry door hardware, and finish to the same standard as the Market Rate.
 - 4. Minimum standards for equipment, fixtures, appliances and finishes have been established for the BMR units. All items installed shall be of good quality. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. All products shall offer durability, reliability and maintain a quality

EXHIBIT "B"

**DEVELOPMENT SCHEDULE MP-02-07: CORY – SAN PEDRO PARTNERS
FY 2004-05 (17 units), FY 2005-2006 (15 units)**

I. SUBDIVISION AND ZONING APPLICATIONS		
Applications Filed:		October 2, 2003
Phase II (8 lots)		April 20, 2004
II. SITE REVIEW APPLICATION		
Application Filed:		
Phase IA and IB (17 units)		October 2, 2003
Phase II (15 Units)		September 1, 2004
III. FINAL MAP SUBMITTAL		
Map, Improvements Agreement and Bonds:		
Phase IA (9 lots):		March 31, 2004
Phase IB (8 lots):		July 1, 2004
Phase II (15 lots):		February 1, 2005
IV. BUILDING PERMIT SUBMITTAL		
Submit plans to Building Division for plan check:		
FY 2004-05 (17 Units)		September 30, 2004
FY 2005-06 (15 Units)		June 30, 2005
V. BUILDING PERMITS		
Obtain Building Permits:		
FY 2004-05 (17 Units)		December 23, 2004
FY 2005-06 (15 Units) (5 Units)		September 30, 2005
(3 Units)		December 2, 2005
(7 Units)		May 31, 2006
Commence Construction:		
FY 2004-05 (17 Units)		June 30, 2005
FY 2005-06 (15 Units)		June 30, 2006

Failure to obtain building permits and commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit two (2) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.



CITY COUNCIL STAFF REPORT

MEETING DATE: March 1, 2006

Agenda Item # 9

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1758, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING A PRECISE DEVELOPMENT PLAN TO ALLOW FOR THE SHARED USE OF A 32 SQUARE FOOT MONUMENT SIGN TO BE LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF EAST DUNNE AVENUE AND SAN BENANCIO WAY. (APN 817-11-013)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1758, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On February 15, 2006, the City Council Introduced Ordinance No. 1758, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1758, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING A PRECISE DEVELOPMENT PLAN TO ALLOW FOR THE SHARED USE OF A 32 SQUARE FOOT MONUMENT SIGN TO BE LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF EAST DUNNE AVENUE AND SAN BENANCIO WAY. (APN 817-11-013)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. This proposed amendment is exempt pursuant to CEQA section 15303 (e).

SECTION 4. The City Council hereby approves an amendment to the precise development plan to allow a 32 square foot shared monument sign for the parcel as shown on the attached zoning plat (Exhibit B).

SECTION 5. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 6. Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 15th Day of February 2006, and was finally adopted at a regular meeting of said Council on the Day of March 2006, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

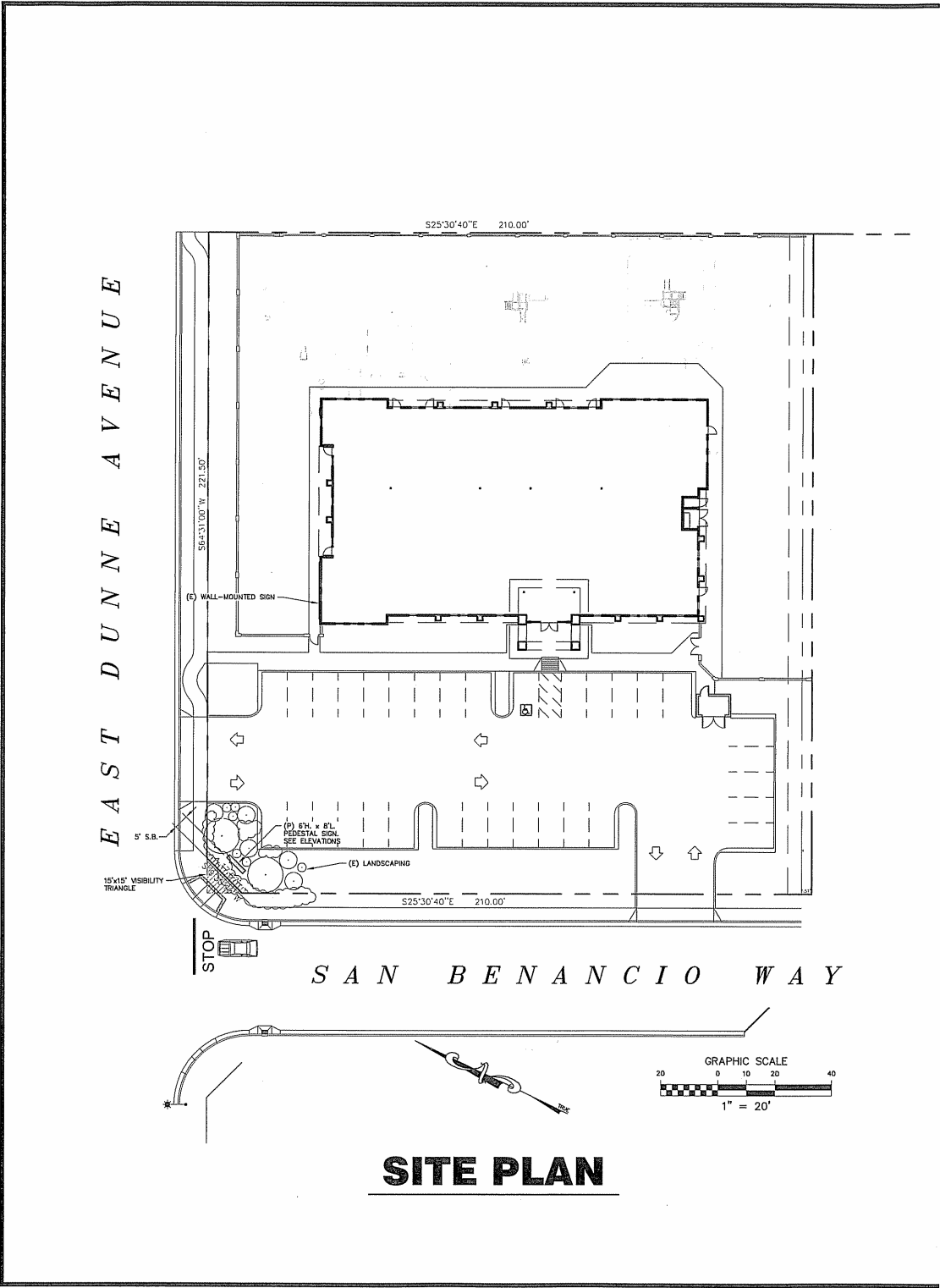
I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1758, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of March 2006.

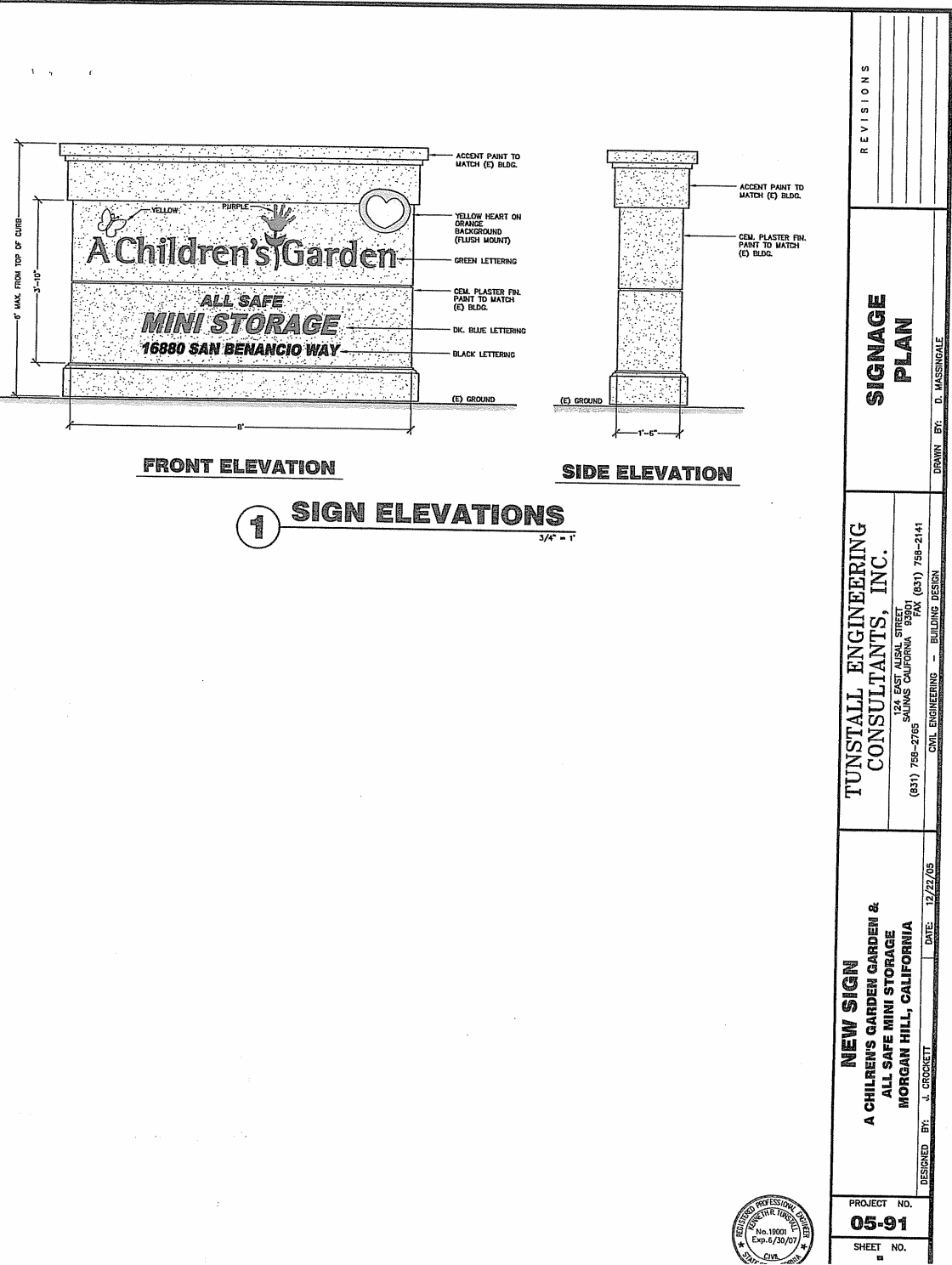
WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Exhibit B







CITY COUNCIL STAFF REPORT

MEETING DATE: March 1, 2006

Agenda Item # 10

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1759, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH AN R-2 3,500/RESIDENTIAL PLANNED DEVELOPMENT ON A .298 ACRE SITE LOCATED ON THE SOUTH SIDE OF SAN PEDRO AVENUE AT THE EASTERLY CORNER OF CORY LANE (APN 817-59-052)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1759, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On February 15, 2006, the City Council Introduced Ordinance No. 1759, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1759, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH AN R-2 3,500/RESIDENTIAL PLANNED DEVELOPMENT ON A .298 ACRE SITE LOCATED ON THE SOUTH SIDE OF SAN PEDRO AVENUE AT THE EASTERLY CORNER OF CORY LANE (APN 817-59-052)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** This project is categorically exempt from CEQA under Section 15315, Minor Land Division.
- SECTION 4.** The City Council finds that the proposed R-2 RPD Overlay District is consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.
- SECTION 5.** The City Council hereby amends the City Zoning Map as shown in attached Exhibit "A".
- SECTION 6.** The City Council hereby approves the precise development plan as contained in that certain series of documents dated October 27, 2005 (date of receipt by the Community Development Department) on file in the Community Development Department, entitled "Cory Lane Site Development Plan" prepared by MH Engineering. These documents, as further amended by site and architectural review, show the exact location and sizes of all lots in this development and the location and dimensions of all proposed buildings, parking areas, landscape areas and any other purposeful uses on the project.
- SECTION 7.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.
- SECTION 8.** Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 15th Day of February 2006, and was finally adopted at a regular meeting of said Council on the Day of March 2006, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

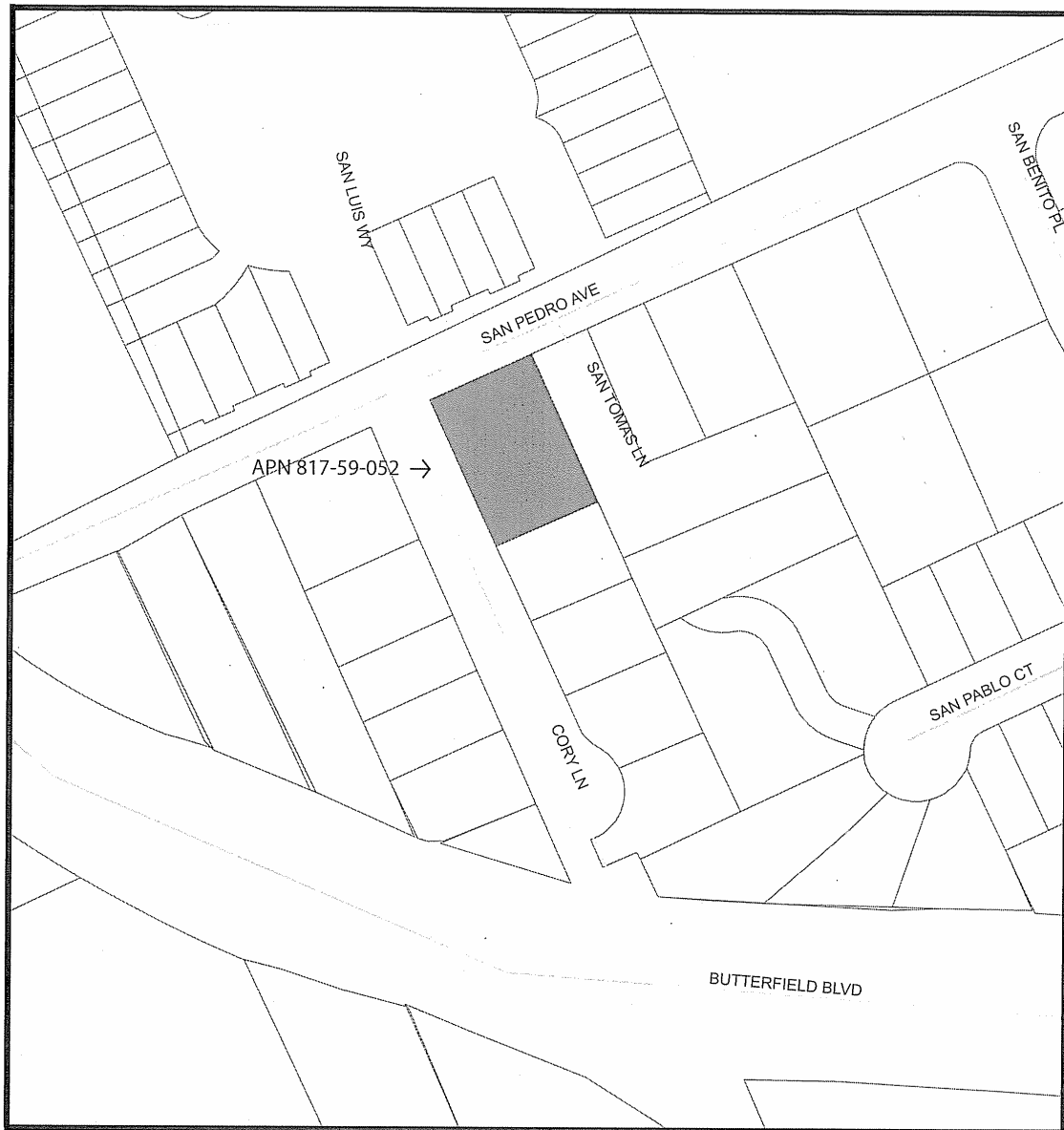
I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1759, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of March 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Exhibit A

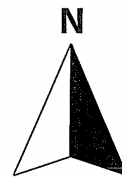


Not to Scale



Vicinity Map

ZA-05-13, San Pedro, Adhamdi
R-2, 3500 RPD





CITY COUNCIL STAFF REPORT

MEETING DATE: March 1, 2006

Agenda Item # 11

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1760, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 05-12 SAN PEDRO-AHMADI FOR APPLICATION MMC-04-06: SAN PEDRO-AHMADI (APN 817-59-052)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1760, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On February 15, 2006, the City Council Introduced Ordinance No. 1760, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1760, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA-05-12 SAN PEDRO-AHMADI FOR APPLICATION MMC-04-06: SAN PEDRO-AHMADI (APN 817-59-052)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code awarded building allocations for fiscal year 2006-2007 to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MMC-04-06: San Pedro- Ahmadi	1 Single-Family Home

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 15th Day of February 2006, and was finally adopted at a regular meeting of said Council on the Day of March 2006, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ **CERTIFICATE OF THE CITY CLERK** ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1760, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of March 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: March 1, 2006

Agenda Item #12

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1761, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 3.56 [DEVELOPMENT IMPACT MITIGATION FEES] OF TITLE 3 [REVENUE AND FINANCE] BY ADDING SECTION 3.56.065 [EXEMPTION FROM FEE INCREASE] AND SECTION 3.56.095 [DEFERRAL OF PAYMENT OF SEWER AND TRAFFIC IMPACT FEES]; AMENDING CHAPTER 12.02 [STREET AND SIDEWALK DEVELOPMENT] OF TITLE 12 [STREETS, SIDEWALKS, AND PUBLIC PLACES] BY ADDING SECTION 12.02.115 [DEFERRAL OF UNDERGROUND UTILITY IN LIEU FEE]; AND REPEALING CHAPTER 3.44 [DEVELOPMENT IMPACT FEES] OF TITLE 3 [REVENUE AND FINANCE]

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1761, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On February 15, 2006, the City Council Introduced Ordinance No. 1761, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1761, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 3.56 [DEVELOPMENT IMPACT MITIGATION FEES] OF TITLE 3 [REVENUE AND FINANCE] BY ADDING SECTION 3.56.065 [EXEMPTION FROM FEE INCREASE] AND SECTION 3.56.095 [DEFERRAL OF PAYMENT OF SEWER AND TRAFFIC IMPACT FEES]; AMENDING CHAPTER 12.02 [STREET AND SIDEWALK DEVELOPMENT] OF TITLE 12 [STREETS, SIDEWALKS, AND PUBLIC PLACES] BY ADDING SECTION 12.02.115 [DEFERRAL OF UNDERGROUND UTILITY IN LIEU FEE]; AND REPEALING CHAPTER 3.44 [DEVELOPMENT IMPACT FEES] OF TITLE 3 [REVENUE AND FINANCE]

WHEREAS, the City Council wishes to acknowledge the increase in impact fees and its burden on developers by amending Chapter 3.56 [Development Impact Mitigation Fees] to provide for a “lock-in” period of six months for the impact fees imposed on commercial and industrial projects;

WHEREAS, the City Council wishes to provide proper authority for its sewer and traffic impact fee deferral program and utility undergrounding in-lieu fee deferral program and wishes to make these programs more attractive to prospective developers; and

WHEREAS, the City Council wishes to eliminate an apparent duplication in the Code by repealing Chapter 3.44 [Development Impact Fees], adopted in 1988, which was effectively superseded by Chapter 3.56 [Development Impact Mitigation Fees], adopted in 1993.

NOW, THEREFORE, the City Council of the City of Morgan Hill does **ORDAIN** as follows:

1. Amendment of Code. Section 3.56.065 [Exemption from Fee Increases] is hereby added to Chapter 3.56 [Development Impact Mitigation Fees] of Title 3 [Revenue and Finance] of the City of Morgan Hill Municipal Code as follows:

3.56.065 Exemption from Fee Increases.

For commercial and industrial projects, the fee amounts pursuant to this chapter or any resolution adopted pursuant thereto shall be locked-in on the date the building permit application for such project is deemed complete by the City, provided that the building permit is issued within six (6) months of this date. The developer of such project shall not be subject to any fee increases pursuant to this chapter or any resolution adopted pursuant thereto during this lock-in period.

2. Amendment of Code. Section 3.56.095 [Deferral of Payment of Sewer or Traffic Fees] shall be added to Chapter 3.56 [Development Impact Mitigation Fees] of Title 3 [Revenue and Finance] of the City of Morgan Hill Municipal Code as follows:

Section 3.56.095 Deferral of payment of traffic and sewer fees.

Payment of sewer and traffic impact fees shall be as stated in Section 3.56.090, except when a deferral is requested and certain conditions, as set forth by resolution of the City Council, are met.

3. Amendment of Code. Section 12.02.115 [Deferral of Payment of Undergrounding Utility In-Lieu Fees] shall be added to Chapter 12.02 [Street and Sidewalk Development] of Title 12 [Streets, Sidewalks, and Public Places] of the City of Morgan Hill Municipal Code as follows:

Section 12.02.115 Deferral of payment of under grounding utility in lieu fees.

Payment of utility undergrounding in-lieu fees, when authorized by the City Council pursuant to Section 12.02.110, shall be as provided for in this Chapter, except when a deferral is requested and certain conditions, as set forth by resolution of the City Council, are met.

4. Retroactive Application. This Ordinance shall apply to anyone that submits a building permit application after the effective date of this Ordinance and to any project applicant that a) submitted a building permit application after July 1, 2005; and b) as of February 15, 2006, has not yet been issued such permit.

5. Repeal of Code. Chapter 3.44 [Development Impact Fees] of Title 3 [Revenue and Finance] of the City of Morgan Hill Municipal Code is hereby repealed in its entirety. Any and all references to Chapter 3.44 in the City of Morgan Hill Municipal Code or any other document shall hereafter be deemed a reference to Chapter 3.56.

5. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance or of this part should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, clause, phrase or word of this ordinance or this part.

6. Environmental Review. This project is not a project under the California Environmental Quality Act ("CEQA").

7. Effective Date: Posting. This Ordinance shall become effective thirty (30) days after the date of its adoption and shall be posted within the City of Morgan Hill in three (3) public places.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 15th Day of February 2006, and was finally adopted at a regular meeting of said Council on the Day of March 2006, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ **CERTIFICATE OF THE CITY CLERK** ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1761, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of March 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: March 1, 2006

Agenda Item # 13

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1762, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 2.04.010 OF THE MUNICIPAL CODE, REGARDING THE TIME AND LOCATION OF THE COUNCIL MEETINGS

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1762, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On February 15, 2006, the City Council Introduced Ordinance No. 1762, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No fiscal impact as the proposed ordinance amendment and Redevelopment Agency Bylaw amendment will identify the first, third and fourth Wednesdays of the month as regular City Council and Redevelopment Agency meetings. The amendments will not add additional meeting dates than are currently being held (either as regular and/or special meetings).

ORDINANCE NO. 1762, NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL AMENDING SECTION 2.04.010 OF
THE MUNICIPAL CODE, REGARDING THE TIME AND
LOCATION OF THE COUNCIL MEETINGS**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY
ORDAIN AS FOLLOWS:**

Section 1. Amendment of Municipal Code. Section 2.04.010 of the Morgan Hill
Municipal Code is hereby amended to read:

Section 2.04.010 Meetings – Time and Location

The regular meeting of the City Council shall be held on the first, ~~and third~~, *and fourth*
Wednesdays of every month. If at any time a regular meeting falls on a holiday, such regular
meeting shall be ~~held on the next business day~~ *canceled*. All meetings shall be held in the
Council Chambers located at the Civic Center, 17555 Peak Avenue, Morgan Hill, California, at
7:00 p.m., or at another time or location as designated by minute order of the City Council.

The foregoing ordinance was introduced at a Regular meeting of the City Council held on
the 15th day of February, 2006 and was finally adopted at a Regular meeting of the City Council
held on the st day of March, 2006 and said ordinance was duly passed and adopted in
accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL,
CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Ordinance No.
1762, New Series, adopted by the City Council of the City of Morgan Hill, California at their
regular meeting held on the Day of March 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

Irma Torrez, City Clerk

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – FEBRUARY 15, 2006**

CALL TO ORDER

Mayor Pro Tempore/Vice-chair Grzan called the special meeting to order at 6:10 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Grzan, and Tate
Late: Council/Agency Member Sellers (arrived at 6:20 p.m.) and Mayor/Chair Kennedy (arrived at 6:30 p.m.)

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

Interim City Attorney/Agency Counsel Siegel announced the below listed closed session items.

1.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code Section 54956.9(a)
Case Name: General Lighting Service, Inc. v. Wells Construction Group, et al. [Consolidated Actions]
Case Number: Santa Clara County Superior Court, Lead Case No. 1-04-CV-025561
Attendees: City Manager, Interim City Attorney

2.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code Section 54956.9(a)
Case Name: Berkman v. City of Morgan Hill et al.
Case Number: Santa Clara County Superior Court, 1-04-CV-031021
Attendees: City Manager, Interim City Attorney

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Authority: Pursuant to Government Code 54956.9(a)
Case Name: Tichinin v. City of Morgan Hill
Case Number: Santa Clara County Superior Court, Case No. 1-05-CV-046112
Attendees: City Manager, Interim City Attorney

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Pro Tempore/Vice-Chairman Grzan opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor Pro Tempore/Vice-Chairman Grzan adjourned the meeting to Closed Session at 6:12 p.m.

Council/Agency Member Sellers and Mayor/Chairman Kennedy joined the City Council/Redevelopment Agency Board in closed session.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:00 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Siegel announced that no reportable action was taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

INTRODUCTIONS

Public Works Director Ashcraft introduced Ryan Klemencic, Engineering Aide.

CITY COUNCIL REPORT

Mayor Pro Tempore Grzan said that over the last couple of weeks he has had the opportunity to engage members of the community on a number of issues about Morgan Hill, and has attended a number of subcommittee meetings. He indicated that the Community Conversation is going well, with good feedback being received. He stated that some of this feedback is being posted on the City's website. He said that there will be several opportunities for the community to engage in a Community Conversation to let the Council know what direction the City might take in dealing with the \$1.5 million budget deficit while sustaining Morgan Hill. He had an opportunity to receive an update on the PL566 project, indicating that this project is at risk at this time. There have been calculations performed by the Army Corp of Engineers; suggesting that the cost benefit ratio is not aligned with the work to be performed. The project is on hold and awaiting further instructions from the Army Corp of Engineers. He indicated that the Utilities & Environment Committee is working with the Water District, as well as Congressman Pombo, who has written a letter to the Army Corp of Engineers. The letter recommends the project move forward as there will be adequate funding in the future. He stated that the Utilities & Environment Committee has been meeting, the last couple of months, to discuss various issues; including cell towers

within the community. He indicated that there is no threat associated with cell towers, and that the City would continue to monitor cell towers as applications come forward. He stated the Committee has reviewed the perchlorate discharges over the last couple of months, and was pleased to announce that there were many non-detectable readings from City wells. He stated that water in Morgan Hill is acceptable; according to state and federal standards at this time.

RECOGNITIONS

City Manager Tewes indicated that Chief of Police Cumming had been delayed in his attendance this evening; and stated that Chief Cumming sends his apology for not being able to present the Certificate of Recognition.

Mayor Kennedy presented Officer Eric Mosunic with a Certificate of Recognition, recognizing him for being the recipient of the California Highway Patrol "10851" Pin.

Assistant Chief Dwight Gooden, Highway Patrol, indicated that only 5-10% of state officers qualify for this award; indicating that this is Officer Mosunic's second 10851 Pin. He said that Officer Mosunic is well on his way to qualifying for his third pin.

CITY MANAGER REPORT

City Manager Tewes stated that every household in Morgan Hill will be receiving the second of a series of newsletter regarding the Community Conversation. He indicated that this newsletter outlines the issues facing the community, and the results of the conversations to date. He said momentum is building and interest is growing; and that there are still plenty of opportunities for community members to join in a Community Conversation. He announced the schedule of upcoming Community Conversations.

CITY ATTORNEY REPORT

Interim City Attorney Siegel indicated that this is the last Council meeting he will be attending as the City's Interim City Attorney; noting that Janet Kern will start her new position as the City Attorney next week. He felt the City would be in good shape, and that Ms. Kern will serve the Council and staff well as she is an experienced attorney. It will also be a benefit to have a city attorney on board who will be at city hall five days a week. He thanked Mayor Kennedy and the Council Members for giving him the opportunity to work for the City of Morgan Hill. He said that there would be exciting opportunities and challenges facing the community such as the budget deficit, the Community Conversation, Redevelopment Plan Amendment, etc. He thanked City staff for its tremendous assistance during his time at City Hall; especially thanking Kathi Bailey, stating that without her help the City Attorney's office could not have functioned as well as it did throughout the course of the year. He stated he would resume the role of backup to the new City Attorney. Therefore, the Council may see him a couple of times during the course of the year.

Mayor Kennedy stated the Council has been pleased and appreciative of all the work performed by Interim City Attorney Siegel and thanked him for his legal assistance.

Mayor Pro Tempore Grzan thanked Interim City Attorney Siegel for his outstanding leadership and the legal advice given to the Council. He looks forward to seeing him in the future.

OTHER REPORTS

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-11 as follows:*

1. **INDOOR RECREATION CENTER (IRC) PROJECT – JANUARY CONSTRUCTION PROGRESS REPORT**
Action: **Information Only.**
2. **SECOND AMENDMENT TO SAN PEDRO PONDS JOINT USE AGREEMENT**
Action: **Approved** the Second Amendment to the Joint Use Agreement with the Santa Clara Valley Water District, Subject to City Attorney and City Manager Approval.
3. **AGREEMENT BETWEEN CITY OF MORGAN HILL AND SANTA CLARA COUNTY FOR OBTAINING ORTHOPHOTO AERIAL PHOTOGRAPHS**
Action: **Authorized** the City Manager, Subject to City Attorney Review and Approval, to Execute an Agreement with the County of Santa Clara for Obtaining Orthophoto Aerial Photographs of the City of Morgan Hill at a Cost of \$17,073.
4. **CONSULTING AGREEMENT FOR SUB-REGIONAL FIRE SERVICE STUDY**
Action: **Authorized** the City Manager to Execute Contract with Citygate Associates for the Purpose of Conducting a Study on Sub-Regional Fire Service.
5. **RECRUITMENT EFFORTS TO FILL UPCOMING VACANCIES TO BOARDS AND COMMISSIONS, AND EXTEND TERMS OF OFFICE**
Action: 1) **Established** February 2006 as Recruitment and April 2006 to Interview/Appoint to Fill Vacancies on the Library, Culture & Arts Commission and Parks & Recreation Commission; 2) **Established** April 2006 as Recruitment and May 2006 to Interview/Appoint to Fill Vacancies on the Architectural & Site Review Board (ARB), Mobile Home Rent Commission, and Senior Advisory Commission; 3) **Directed** Staff Regarding Questions the Council would like Added to the Applications, if any; 4) **Extended** the Terms of Office for

*Library, Culture & Arts and Parks & Recreation Commissioners until such Time the Council Concludes the Interview and Appointment Process; and 5) **Directed** the City Clerk to Notify the Commissioners of their Term Extension.*

6. **RESOLUTION OF INTENT TO VACATE A PORTION OF TAYLOR AVENUE AND SETTING TIME AND PLACE FOR THE PUBLIC HEARING**
Action: 1) **Adopted** Resolution No. 5973, Resolution of Intent to Vacate a Portion of Taylor Avenue; Thereby Setting March 1, 2006 at 7:00 P.M. in the Council Chambers as the Time and Date for the Public Hearing; and 2) **Directed** the City Clerk to Publish the Adopted Resolution of Intent as Required by State Law.
7. **RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) 2005 QUARTERLY REPORT #4**
Action: **Accepted** and **Filed** Fourth Quarter Report for 2005.
8. **ADOPT ORDINANCE NO. 1754, NEW SERIES**
Action: **Waived** the Reading, and **Adopted** Ordinance No. 1754, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1733, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP 02-06: EAST DUNNE-DEMPSEY (DELCO) ALLOWING FOR A SIX MONTH EXTENSION OF TIME FOR SUBMITTING AND OBTAINING BUILDING PERMITS FOR 8 ALLOCATIONS RECEIVED IN THE 2003 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) COMPETITION. (APNS 817-11-067 & 817-11-072).**
9. **ADOPT ORDINANCE NO. 1755, NEW SERIES**
Action: **Waived** the Reading, and **Adopted** Ordinance No. 1755, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH AN R-2 3,500/RESIDENTIAL PLANNED DEVELOPMENT ON A 7.5 ACRE SITE LOCATED ON THE NORTH SIDE OF EAST CENTRAL AVENUE AT THE NORTHERLY TERMINATION OF CALLE MAZATAN. (APN 726-26-004).**
10. **ADOPT ORDINANCE NO. 1756, NEW SERIES**
Action: **Waived** the Reading, and **Adopted** Ordinance No. 1756, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT APPLICATION DA-05-05 FOR APPLICATION MP 04-14: CENTRAL-HU (DELCO) (APN 726-26-004).**

11. **USE OF THE FLOATING DATE FOR A GENERAL PLAN AMENDMENT REQUEST INVOLVING A VACANT 2.66 ACRE PACEL ADJACENT TO AND NORTHERLY OF THE WALNUT GROVE DRIVE/LAUREL ROAD INTERSECTION**
*Action: **Directed** Staff to Utilize the Floating Date, if Necessary, for a General Plan Amendment Request Involving a 2.66 Acre Vacant Parcel Adjacent to and Northerly of the Walnut Grove Drive/Laurel Road Intersection.*

Mayor Kennedy announced that the general plan amendment relates to a Trader Joes grocery store. He stated that the Council is pleased to see this item move forward.

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

***Action:** On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Sellers, the City Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 12-16, as follows:*

12. **RESOLUTIONS TO AUTHORIZE THE DEPOSIT AND WITHDRAWAL OF MONIES IN THE LOCAL AGENCY INVESTMENT FUND (LAIF)**
Action:
*1. Acting as City Council, **Adopted** Resolution No. 5974, Authorizing Officers/Employees, and their Successors, to Deposit and Withdraw Monies in the Local Agency Investment Fund;*
*2. Acting as Redevelopment Agency Board, **Adopted** Resolution No. MHRA 259, Authorizing Officers/Employees, and their Successors, to Deposit and Withdraw Monies in the Local Agency Investment Fund.*
13. **JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF JANUARY 20, 2006**
***Action:** **Approved** as Submitted.*
14. **JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF JANUARY 21, 2006**
***Action:** **Approved** as Submitted.*
15. **ADJOURNED JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF JANUARY 25, 2006**
***Action:** **Approved** as Submitted.*
16. **JOINT REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF JANUARY 25, 2006**
***Action:** **Approved** as Submitted.*

City Council Action (Continued)

CONSENT CALENDAR:

Council Members Carr and Sellers requested that item 17 be removed from the Consent Calendar.

Council Member Carr requested that items 18 and 19 be removed from the Consent Calendar as he would be recusing himself from voting on these two items.

17. ACCEPTANCE OF PEDESTRIAN CROSSING IMPROVEMENTS AT MONTEREY ROAD AND CENTRAL AVENUE

Council Member Sellers stated that he would be recusing from participating on this item as he resides within 500 feet of the project. He excused himself from the Dais.

Council Member Carr noted that this project was the culmination of a partnership with the City of Morgan Hill and the Morgan Hill Unified School District. He said that a lot of work went into this project by staff and the City-School Liaison Committee. He indicated the City-School Liaison Committee tried to find a project that qualified under the Safe Route to Schools Grant that would provide a safe route to school for children. He thanked staff for the grant application; noting this was a successful partnership between the City and School District. It is his hope that there would be other future partnerships for the benefit of the community.

Action: *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council, on a 4-0 vote with Council Member Sellers absent: 1) **Accepted** as Complete the Pedestrian Crossing Improvements at Monterey Road and Central Avenue Project in the Final Amount of \$237,882; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*

Council Member Sellers resumed his seat on the Dais.

Council Member Carr stated that he would be stepping down from participating on Agenda items 18 and 19 as his home is located within 500 feet of these two items. He excused himself from the Dais.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Approved** Consent Calendar Items 18-19 as follows:*

18. ADOPT ORDINANCE NO. 1752, NEW SERIES

Action: ***Waived** the Reading, and **Adopted** Ordinance No. 1752, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH AN R-2 3,500/RESIDENTIAL PLANNED DEVELOPMENT ON A 2.65***

ACRE SITE LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF WRIGHT AVENUE AND HALE AVENUE. (APNs 764-32-017 & 018).

19. ADOPT ORDINANCE NO. 1753, NEW SERIES

Action: Waived the Reading, and Adopted Ordinance No. 1753, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT APPLICATION DA-05-07 FOR APPLICATION MP 04-27: Wright Avenue - Dividend (APN 764-32-017 & 018).

Council Member Carr resumed his seat on the Dais.

City Council Action

PUBLIC HEARINGS:

**20. DEVELOPMENT AGREEMENT AMENDMENT, DAA-03-11: SAN PEDRO-DICONZA
– *Ordinance No. 1757, New Series***

Director of Community Development Molloy Previsich presented the staff report on a request to amend a development agreement for a 32-unit development to incorporate changes in the schedule and the process to construct a third below market rate unit.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) Waived the Reading in Full of Ordinance No. 1757, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council Introduced Ordinance No. 1757, New Series, by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO DEVELOPMENT AGREEMENT, DA 03-11 TO INCORPORATE CHANGES IN THE SCHEDULE AND PROCESS TO CONSTRUCT THE 3RD BMR UNIT FOR APPLICATION MP 02-07: CORY-SAN PEDRO PARTNERS. (APN 817-11-061), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

21. ZONING AMENDMENT, ZAA-98-01: EAST DUNNE-SHAW – *Ordinance No. 1758, New Series*

Director of Community Development Molloy Previsich presented the staff report for a request to amend a precise development plan to allow for a shared use of a 32 square foot monument sign to be located on

the southeast corner of the intersection of East Dunne Avenue and San Benacio Way. She informed the Council that the application was reviewed by the Planning Commission and that on a 6-1 vote; they recommend Council approval of the amendment. The one Commissioner dissenting was not in opposition to the monument sign, but stated their support of a smaller monument sign. She indicated that the size of the monument sign would be comparable to other monument signs and that the monument sign would be 4 feet tall by 8 feet wide (32 square foot sign).

Mayor Kennedy opened the public hearing.

Bill Shaw, applicant, indicated that he purchased the property in 1998 with the thought of placing a mini storage facility along Dunne Avenue for its visibility. He informed the Council that this mini storage facility has 450 units with an estimation of 20 individuals moving in and out every month. He informed the Council that the Tudor Time/The Children's Garden day care center is doing well. When the project was completed in 2000, he thought planning staff understood that the sign to be located at the corner would be the shared sign for the mini storage as part of the PUD. However, it was not clear to planning staff that this was the case and signage was denied. He indicated that the mini storage has been struggling ever since the adjacent housing project was built. He requested Council support of the monument sign. He confirmed that the monument sign would be 4' x 8'; a low profile sign. He felt the sign would be smaller than other monument signs in the community.

No further comments being offered, the public hearing was closed.

Council Member Sellers declared that he has not had the opportunity to talk to the project proponent, but that the project proponent did try to contact him. He indicated that the supplemental information provided prior to the meeting was helpful. He felt the signage was appropriate.

Council Member Carr stated that he spoke to Mr. Shaw.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1758, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council **Introduced** Ordinance No. 1758, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING A PRECISE DEVELOPMENT PLAN TO ALLOW FOR THE SHARED USE OF A 32 SQUARE FOOT MONUMENT SIGN TO BE LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF EAST DUNNE AVENUE AND SAN BENANCIO WAY (APN 817-11-013), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

22. ZONING AMENDMENT, ZA-05-13/ DEVELOPMENT AGREEMENT DA-05-12: SAN PEDRO-AHMADI – Ordinance Nos. 1759 and 1760, New Series

Director of Community Development Molloy Previsich presented the staff report for a request to approve a zoning amendment to establish an R-2, 3,500/Residential Planned Development on a .298 acre site located on the south side of San Pedro Avenue, at the easterly corner of Cory Lane.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1759, New Series (Zoning Amendment).*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1759, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH AN R-2 3,500/RESIDENTIAL PLANNED DEVELOPMENT ON A .298 ACRE SITE LOCATED ON THE SOUTH SIDE OF SAN PEDRO AVENUE, AT THE EASTERLY CORNER OF CORY LANE (APN 817-59-052)**, by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1760, New Series (Development Agreement).*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1760, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 05-12 SAN PEDRO-AHMADI FOR APPLICATION MMC-04-06: SAN PEDRO-AHMADI (APN 817-59-052)**, by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

City Council Action

OTHER BUSINESS:

23. INDOOR RECREATION CENTER (IRC) MARKET STUDY AND OPERATING MODEL

Council Member Carr indicated that the Public Safety & Community Services Committee (Committee) was tasked to look at an operational model for the IRC. Tonight's presentation is the culmination of several people's efforts, including staff, the Committee and others. He indicated that Council Member Tate would lead the presentation from the Committee on how it examined the partnership model. He stated that YMCA representatives would be making a presentation as well.

Assistant to the City Manager Dile addressed the operational model to be used at the IRC as the City prepares for the grand opening this fall. She indicated that Interim Recreation and Community Services Manager Cooper and she would be presenting the staff report. She addressed Council objectives as part of the Visioning Process for the proposed extension of the Redevelopment Plan. She addressed the actions taken to date; indicating that the City and YMCA staff met for over a year in order to try to meet the Council's objectives.

Interim Recreation and Community Services Manager Cooper said that for the past five months, he has worked with the YMCA toward a partnership model. The model addressed community access. He indicated that the results from the study show good community access. The model allows for "drop ins" as well as "pass" users. He stated that cost recovery would be achieved in the third year. As far as City control is concerned; the City would have final say on all issues should good faith efforts not be demonstrated. He said the model is unique in that there will be two operators. He stated that good faith efforts are needed to achieve the Council's goal of providing a good facility to the community. There is a difference between a YMCA partnership model and city model. He indicated that there would be cost savings to the City should the YMCA take over the senior nutrition program. He addressed the policy tradeoffs that may impact cost recovery with drop ins. He felt the proposal to be reasonably affordable, provides good accessibility, has a good chance of breaking even in the third year, and gives City authority to resolve disputes. He indicated that the IRC is proposed to open in September 2006.

Council Member Tate stated that the Council and the Committee have worked on the IRC model for a long time. Staff has supported the Council's efforts and stated the Committee's appreciation of staff support. He noted the Council identified a goal of adopting an operational model for the IRC. He indicated that a partnership contract would return to the Council for approval. He said that Council Member Carr has been aligned with the YMCA as a former board member. He is a member and is aligned with the YMCA's developmental assets. He indicated that the YMCA is aligned with the City. He addressed the analysis of the partnership model. He stated that management needs to be resolved, should the City move forward with the partnership model. He addressed the risks and benefits associated with each model. He stated the Committee hopes that the YMCA would be able to supplement fees for low income individuals. He presented an operational cost comparison. He said the Committee recommends the City negotiate a partnership, with objectives, as this model ensures that the risk is shared. As owners of the facility, the City has ultimate authority, including hiring a manager. He addressed scholarships associated with the use of the facility. The Committee recommends a five-year contract term with items to be negotiated in partnership in terms of measurements. It is proposed that the YMCA would continue the senior nutrition program. He noted that the YMCA partnership model heads toward cost recovery in year three.

Jan Hagemann, Board Manager for Mount Madonna YMCA, indicated that this is a local branch led by local board managers. She stated that the YMCA is looking forward to a partnership; a win win partnership in building a stronger and healthier community. She indicated that the YMCA is good in delivering healthcare and fitness services to build strong families. She addressed the YMCA-values, noting that they have been in Morgan Hill for the past 20 years.

Dave Thornton, CEO for YMCA, stated that the Mt. Madonna YMCA is 1 of 7 in the association. He thanked Ms. Hagemann and members of the Board for their outstanding contributions to the community. He also thanked City staff for their assistance and to Council Members Carr and Tate for their involvement in the culmination of the proposal being presented this evening. He has enthusiasm for this partnership model, understanding that there are details to be worked out. The proposal will create a win for the City, the YMCA and the citizens of Morgan Hill. He assured the Council that the full resources of the organization would be used to make this partnership successful. He addressed the positives the YMCA organization would bring to this partnership: 1) core competency, including entrepreneurial skills in marketing and income generation; 2) YMCA has long term successes in providing health and fitness on a cost recovery basis; 3) brings into this effort their reputation; 4) brings along the larger YMCA organization that will allow Morgan Hill citizens to have free memberships to all YMCA facilities across the country; and 5) the partnership will result in accessibility. He stated that the mutual success is dependent upon both parties engaging in the partnership in collaboration. He said that the YMCA is committed to this partnership.

Council Member Carr indicated that it is the Committee's recommendation that the Council direct staff to negotiate a YMCA Partnership model contract.

Council Member Grzan indicated that in the presentation and in the survey conducted, staff looked at cost information. He noted the cost information presented considered City staff rates and noted that the YMCA staff rates were lower. He inquired whether the outcome of the survey would have been different if staff rates were the same.

Mr. Cooper indicated that the YMCA's salaries are lower than what the City would pay its employees. Staff presented the budget information according to what the YMCA pays its employees at the present time. He clarified the City could not pay the YMCA rates as the City has established rates. If the rates were the same, the two models would be the same or close, except for the senior nutrition program component that the YMCA would continue to operate based the funding source.

Mayor Kennedy referred to the senior nutrition program. He said it was his understanding the County would continue to fund the senior nutrition program as an existing program, should the YMCA or a non profit organization continue to operate the program.

Mr. Cooper noted that the YMCA is the current provider of the senior nutrition program. Should the YMCA organization transfer over to the IRC facility and continues to provide a transitional program; the County has indicated a match would not be necessary for this service. However, should the City take over the nutrition program, the County would consider the program at a new site, and that the County would require a 50% match. Therefore, it would be 50% cheaper for the YMCA to continue to operate the senior nutrition program. He indicated the YMCA is not excited about being the provider of the senior nutrition program as the program is paperwork intensive. He informed the Council that the past provider stopped this program because they could not handle the extra overhead. With the \$75,000 given by the City to the existing facility, some of this funding has been applied to cover some of the overhead. Therefore, City assistance would need to continue in order for the YMCA to continue being the provider of the nutrition program. Otherwise, it would not be cost affective for the YMCA to

continue to be the provider. Should the program continue, as it stands today, the City would not need to pay 50% of the costs.

Mayor Kennedy inquired as to the basis for a 5-year contract. Can this be structured as a 2-3 year contract? He inquired whether consideration was given to a release from the contract should a problem occur to either party, within a reasonable period of time.

Mr. Cooper indicated that the proposal calls for a 5-year term with a City option to continue the contract for 5 years, if so desired. It was contemplated that 5-years would be the term that would allow everyone to become comfortable with each other, and that both parties would be able to decide whether the contract should be continued at the end of the 5-year term. He felt a 5-year contract was a reasonable time period to make everything work appropriately. He informed the Council that a release clause in the contract would be possible, if so desired by the Council.

Mayor Pro Tempore Grzan referred to the numbers used in the survey of 455 users. He inquired how much of these numbers were unduplicated counts.

Mr. Cooper clarified that the 455 number is the total user count.

Mayor Pro Tempore Grzan noted that staff indicated that the project would break even in the third year. However, staff did not mention the loss to occur in years 1-3.

Mr. Cooper said the loss would depend on the model adopted by the Council. He felt the City would have a better chance of breaking even sooner by using the YMCA partnership model based on the abilities they already have built in. He said there are a lot of variables involved in terms of when the City moves forward and the model chosen.

Mayor Pro Tempore Grzan said that a few years ago, several studies were conducted. One was a City only operational model. He noted staff did not consider this model in this particular process. He inquired whether there would be an advantage to Morgan Hill residents with a different type model.

Mr. Cooper stated that it was his charge to see if he could bring the YMCA and the City together in a hybrid model that made sense. He felt that he has done so, indicating that he did not spend much time dealing with what happened in the past, in terms of the models studied. He looked at the numbers in terms of visits. He indicated that the total visitor numbers were approximately the same as the prior Sports Management Group City model. He said that a lot of other cities are proceeding with a city model, indicating that this is the more traditional model. The \$7 drop in fees proposed is at the upper end of the fees charged by other cities. However, the drop in fees varies, in terms of how much subsidies cities are willing to pay, or depending on how much cost recovery is desired.

Mayor Kennedy noted that a city model opens the facility to all members of the public. He understands the YMCA perspectives that they never turn anyone away, and that they have scholarships available. He expressed concern that there may be some individuals that would not use the facility without some outreach that would be seen in a city run model.

Mr. Cooper said that this is the tradeoff that staff is dealing with in terms of cost recovery. If the overriding issue is 100% cost recovery, he felt the City needs to move toward an annual pass model in order to provide the revenue needed to meet 100% cost recovery. Should the City go the other way, the lower priced drop in pass would dramatically affect the number of individuals who would buy the annual pass as you lower the drop in rates. Doing so, would dilute the ability of the money generator, the annual pass, to move the City forward. He felt the total user numbers would be the same, in terms of all models, as being over 400,000 total user visits. It was his belief that this model provides a good opportunity for the vast majority of Morgan Hill residents. There is also a \$60,000 scholarship fund built into the budget, regardless of whether it is to be a City or YMCA model. The \$60,000 would come through revenues generated from the facility (self generating). The model proposes to have a reasonable day pass and have an affordable/accessibility number, as well as having additional accessibility for individuals who cannot afford the day pass.

Council Member Carr indicated that accessibility was an issue reviewed by the Committee. The Committee found that by looking at a partnership model, it does not limit accessibility from any other model that could have been considered. He noted the City would be adding access to the facility that would not have occurred had staff not added the scholarship line item to the budget. He suggested the Council think about a scholarship line item for other facilities as well.

Mayor Pro Tempore Grzan said that in looking at the previous studies conducted years ago and in looking at alternatives A, B, and C, in each case, it shows the City operating in a positive cash flow. He inquired whether there was a different model that could be developed that could lower the rates that would make the facility affordable to Morgan Hill residents.

Mr. Cooper responded that he did not know of another model that would lower the rates for Morgan Hill residents. He felt the best chance the City has to becoming self sustaining would be a model that relies more on annual passes versus day rates. Should the Council desire not to maximize cost recovery, and is willing to provide some subsidy; he felt there is a model that would accommodate lower rates to operate the facility. He felt this was a good model, and that he would recommend this as a model that would be successful. He noted the YMCA has the experience of being 100% cost recovery in their facilities, and would give the City the opportunity to tie into this expertise; giving the City a good chance of being self sustaining at the end of three years. It was his belief the City could assemble the same expertise, but not as fast as the YMCA. He felt it would take the City a little longer to achieve the 100% cost recovery because the City would be starting from ground zero. He stated that the YMCA would infuse the center with their expertise almost immediately and that it would take the City longer to get to where the YMCA is at this time. He noted the City does not have individuals to staff the IRC facility, where the YMCA has the commitment for full resources to get the center up and running. They also have the expertise in opening facilities of this type. This would provide the City with the ability to get closer to cost recovery sooner than the City would have, otherwise.

Council Member Sellers noted that one of the challenges faced with the aquatics center was that the City started from scratch with every staff member. The Council also saw the challenges that existing staff had

in undertaking the aquatics facility. Therefore, the Council already experienced the opening of a City operated facility.

Mayor Pro Tempore Grzan inquired as to current YMCA memberships in Morgan Hill.

Debbie Cupp indicated that there are approximately 200 facility members who pay annual passes. The YMCA also has just over 2,000 basic members who pay an annual fee of \$25 and participate in YMCA programs. Approximately 95% of these numbers would be Morgan Hill residents. This proposal is based on survey results, and that the survey anticipates 23% participation from outside the Morgan Hill area and that 77% would be from Morgan Hill. It would be YMCA's goal to get as many Morgan Hill residents to use the facility. However, in order to achieve full cost recovery, the facility would need to attract individuals from the surrounding areas to reach the numbers needed.

Special Assistant to the City Manager Spier informed the Council that the Sports Management Group study indicated that 71% of Morgan Hill residents would use the indoor recreation center.

Mayor Pro Tempore Grzan inquired whether the YMCA would be agreeable to a stipulation in the agreement that either side, with or without cause and with a one year written notice, can terminate the agreement.

Council Member Carr felt it important that the Council keeps its discussion and questions at a policy level, and that the Council not negotiate over the details.

Mayor Kennedy opened the floor to public comment.

Walter Von Tagen indicated that a few years ago, he stated that it was his belief the YMCA was the organization in town to run the indoor recreation center. He is before the Council this evening to once again state the YMCA is the organization in town that should run the indoor recreation center. He applauded the Council for directing the report presented this evening. He commended the Committee for its recommendation. He noted the City is facing five years of deficit spending and that the aquatics center and community center have not yet shown a profit. He felt it to be fiscally prudent, at this time, or at least the next five years, to allow the YMCA to operate the indoor recreation center and use their resources/history in running similar centers, and to use their nationwide network to operate the center.

No further comments were offered.

Mayor Pro Tempore Grzan expressed concern with the timeline brought before the Council. He indicated that he has had a short period of time to review the information/models presented. He expressed concern that the Parks & Recreation Commission, appointed by the Council to oversee parks and recreation activities, was not a part of the presentation, nor given this information. He felt it important to have this Commission review the information as they have a vested interest in Morgan Hill recreation with deep ties within the sports community and youth sports activity; as well as with the senior groups. He would like to receive their comments/views on this particular proposal and the fees suggested. He would like to give the Commission the opportunity to review the proposed partnership

model as this would be a significant step for the community. He felt the Commission was instrumental in providing the Council with guidance and information. He inquired whether there was time, in the process, to send the partnership model to the Commission for their review and comment.

Council Member Tate noted that the Public Safety & Community Services Committee was charged to review the partnership model without being referred to the Parks & Recreation Commission in order to meet the timeline to get this facility on line as quickly as possible. He did not see any reason to revisit a decision made a long time ago.

Council Member Carr noted that the Council has identified a goal of today's date for making a decision on the operational model for the indoor recreation center. The Council would be meeting this goal by making a decision this evening.

Council Member Sellers disclosed that he made a minor contribution to the YMCA. The last time the issue was before the Council with a YMCA model, he did not support the YMCA operating the entire facility. He felt it important the City have a degree of control of this multi million dollar facility. He said that his concerns have been satisfied this evening based on the deal points agreed upon by the YMCA and the City, as presented this evening. He felt the City was achieving its goals, noting the City would have control in hiring. He said that when you talk about cost recovery, you need to look at business models and how they work. He did not believe money would be made in the first year and that the City would be better off by adding partners, particularly when the partners bring in expertise not in place. He said these two items impressed him when it comes to cost recovery. The City's marketing opportunities can be expanded through the YMCA organization. He felt there were a few items the City needs to be cognizant about as the City moves forward. He said that it makes sense to continue with the senior nutrition program in this model. He recommended the senior center be monitored in terms of quality and programming to be provided at the new facility. He would like to know the types of expansions that can be achieved, in terms of access to this facility. It would be important to monitor usage of the facility. He noted that this is a youth and senior facility first and foremost. He wanted to make sure youths have access to the facility and feel comfortable using the recreational facilities, regardless of their family's ability to pay. If the City is careful in its approach, the City can enhance its ability to provide services to youth and individuals who may not have otherwise taken advantage of the facility due to lack of resources, and who were not comfortable approaching the facility. He was encouraged by what he has seen/heard this evening, and with the agreement put together as it has met his concerns. He felt the partnership model would do much more than the City could do on its own.

Mayor Pro Tempore Grzan requested more information about sharing of risks/profits.

Council Member Carr responded that the Committee laid out an objective that staff needs to return to the Council with a contract that shares the risk. However, the details of the risk such as percentages, when, and/or how much, were not items dealt with in the discussions in the policy of this matter.

Mayor Pro Tempore Grzan said that he needs to have additional information. He would like to know what the risks are.

Mr. Cooper said that staff has had fairly extensive conversations about risk. He said the YMCA is prepared to share 35% of the risk and 35% of the profits.

Mayor Pro Tempore Grzan said that he comes from the “old school” where recreation was affordable; where families and children paid a nominal fee for the use of public recreational facilities. He noted that society has moved differently, especially in Morgan Hill. He noted Morgan Hill has created recreational programs that have added to the deficit of the City. He felt the \$1.5 million could be directly attributed to the City’s new recreational programs. He stated it would be his preference for a city model, and felt the citizens in the community would like to see an affordable city program built with city dollars. If the City does not resolve the budget deficit, the City may be looking at laying off public safety officers and reducing core/level of services the community has become accustomed to. He was still not sure about this partnership model, and that he would be looking for more information such as figures, specifics, details, what the agreement would look like, etc. It was his belief this information would come to the Council, in the future should it agree to move forward with the partnership model. He noted the Parks and Recreation Commission did not want the City to move in this direction when given the opportunity to review this issue years ago. It was his belief that many Commissioners may still have a preference for a city model. He felt pressured in making a decision this evening without benefit of speaking to Parks & Recreation Commissioners and/or other members in the community regarding the model before the Council. It was his hope that someday, the City would be able to return to a City model. It would have been his preference that some of RDA dollars would have gone into building an infrastructure to increase the City’s revenue stream in order to build facilities, and sustain them at rates affordable to families in Morgan Hill. He expressed concern that even though the survey indicates there would be a significant number of individuals willing to pay \$1,100 per year for an annual pass for core services; he was concerned with the \$7 drop-in rate for a youth or anyone else, that they may find it to be prohibitive and exclusive. He acknowledged the City would be offering \$60,000 in scholarships, but felt there were individuals on the border line who would not ask for the scholarships, and not be able to pay the higher fees. He recommended the City carefully monitor the fees and numbers to make sure the City is not excluding Morgan Hill residents from participating in recreational facilities/services they have paid for.

Mayor Kennedy stated that his experience with the YMCA is that they are a wonderful non profit service provider and that he has used their programs. He has been involved with the Cornerstone Project along with Council Member Tate. He said the issue is not about the YMCA, but about the indoor recreation center. He disclosed that he met with Debbie Cupp and Crickett Rubino. He also spoke with several members of the Parks & Recreation Commission in order to hear both sides of the issue. In a perfect world, he felt a city run model, with a role for the YMCA, would be the best program. However, in light of the City’s difficult budget situation, he felt it made sense to proceed with a YMCA partnership model. However, he would like to keep open the ability for the City to be able to operate all programs when it made sense to do so. He felt the City needs to move forward with the indoor recreation center-YMCA partnership model; protecting the City for future options and ability to get out of the agreement with proper notice. He would like to ensure that the risks and profits are being shared in a true partnership. He thanked the YMCA for their many years of work in the community, the Committee and staff for working many long hours, and the Parks & Recreation Commission for working on this issue.

Council Member Carr thanked the Council for entrusting the Committee with the ability to work on the model for the indoor recreation center. He said the Committee had the ability to look at the different models; spending time with YMCA staff. He thanked staff for putting in countless hours and coming up with a positive approach. He said that several individuals reached out to him and expressed their opinions. He thanked Council Member Tate who spent a lot of time with him in going through this process, and for challenging the assumptions being made. He said the Committee's recommendation is not a reflection of the City's ability to operate the facility. He felt the partnership would have a better chance of succeeding versus either entity operating the facility on their own. He acknowledged that relationships and partnerships can be difficult. However, if both sides are committed to the goals to be set at the beginning, he felt that successes can be achieved. He acknowledged there are a lot of details to be determined, and that the Council will be asking City staff and YMCA staff to work on the details within the parameters to be given this evening. The contract is to return to the Council to make this partnership a success, and make the indoor recreation center the facility the Council wants it to be for the citizens of Morgan Hill.

Action: *Council Member Carr made a motion, seconded by Council Member Sellers to: 1) **Receive** the Results of the Market Study on Possible Partnership Operating Model for the Indoor Recreation Center; and 2) **Direct** Staff to negotiate a partnership with the YMCA to jointly operate the IRC based upon the model, as presented this evening, and the parameters as suggested by the Council's subcommittee on risk sharing; City maintaining ultimate authority, financial support from the YMCA; and a five-year term that includes measurements and evaluation. The YMCA is to continue to operate the senior nutrition program with annual renegotiations. The City is to achieve cost recovery by year three. The contract is to return to the City Council for final consideration by the third meeting in March 2006.*

Mayor Kennedy offered a friendly amendment to the motion to include a provision in the five year term that would allow the City or the YMCA flexibility to withdraw from the agreement based on certain parameters agreed upon.

Council Member Carr said that in the discussion he and Council Member Tate had about this issue, it is felt that this would be inherent within the model in the five year period. He would expect that staff would include a termination clause in the contract agreement.

Mayor Pro Tempore Grzan inquired whether the Parks & Recreation Commission would become involved, at some point, should the action be approved this evening.

Mr. Cooper informed the Council that the Parks & Recreation Commission will be meeting next week at which time he would present them with this model and what the Council has decided. He would request their input for a second time.

Council Member Tate said that decisions need to be made based on the information before the Council. In looking at all factors presented, it seems overwhelming to him that the partnership approach is relying on expertise that exists within the community today. He agreed the City could hire the expertise needed

to move forward, but felt there is a lot of risk and delay in this approach. He noted that cost recovery has become a big factor because of the budget problems the City is facing. He felt that this is the prudent way to go. He did not believe a termination clause was needed as the partnership would work well. However, it does not mean you should not have the ability to get out of an agreement, if necessary. He supported proceeding with the best model and moving forward.

Council Member Sellers felt the Council needs to stop perpetuating the notion that the City's recreation facilities are the cause of the City's deficit. He noted that all models indicated it would take three years to reach a break even situation, noting that this is only year two for the community center. He indicated that the Council made a conscious decision to accommodate as many youth in the community as possible. In order to do so, the Council had to structure the rates lower than what was recommended. If anyone wants to state the City needs to achieve cost recovery for the aquatics center, they need to come before the Council and state that the City should not serve the poorest kids in the community. He felt the Council needs to monitor the indoor recreation center, and remember that it is here to serve the community in the best way possible.

Mayor Pro Tempore Grzan stated that he would agree to move forward in approving the partnership model this evening; conditioned upon the final detailed agreement coming before the Council. He wants to see the details in order to ensure the interests of Morgan Hill are protected and satisfied.

Mayor Kennedy felt this was a wonderful time for celebration as the indoor recreation center is moving forward; providing much needed services to the community.

Vote: *The motion carried unanimously (5-0).*

24. IMPACT FEE ORDINANCE AND RESOLUTIONS – *Ordinance No. 1761, New Series; and Resolution Nos. 5975 and 5976*

Business Assistance and Housing Services Manager Maskell presented the staff report, indicating that staff has brought before the Council an impact fee ordinance and resolutions for its consideration that would address economic development inhibitors that: 1) revise the City's traffic-sewer financing program to make it more attractive to perspective users; 2) to change the current policy to allow non residential developers to lock impact fees for six months upon the submittal of a completed building permit plan check application; and 3) a developer fee deferral program for utility underground in lieu fees.

Mayor Kennedy opened the floor to public comment.

Dan Ehrler expressed the Chamber of Commerce's sincere appreciation to staff and the Community & Economic Development Committee for addressing the economic development inhibitors, and bringing the recommended actions forward this evening. The Chamber of Commerce is encouraged, pleased, and grateful that this item is before the Council this evening as it is a step in the right direction. He stated that the Chamber looks forward to continuing the conversation; returning to the Council with additional recommendations through this process.

No further comments were offered.

Council Member Sellers thanked staff for taking the initiative to undertake this item and bringing it forth. He also thanked the Chamber for agreeing to undertake the review and the extra steps required. He felt this has been a good collaborative process and that it continues to move the City in the right direction.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1761, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council **Introduced** Ordinance No. 1761, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 3.56 [DEVELOPMENT IMPACT MITIGATION FEES] OF TITLE 3 [REVENUE AND FINANCE] BY ADDING SECTION 3.56.065 [EXEMPTION FROM FEE INCREASE] AND SECTION 3.56.095 [DEFERRAL OF PAYMENT OF SEWER AND TRAFFIC IMPACT FEES]; AMENDING CHAPTER 12.02 [STREET AND SIDEWALK DEVELOPMENT] OF TITLE 12 [STREETS, SIDEWALKS, AND PUBLIC PLACES] BY ADDING SECTION 12.02.115 [DEFERRAL OF UNDERGROUND UTILITY IN LIEU FEE]; AND REPEALING CHAPTER 3.44 [DEVELOPMENT IMPACT FEES] OF TITLE 3 [REVENUE AND FINANCE]**, by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Resolution No. 5975, Establishing a Revised City Deferral Program for Traffic, Sewer and Utility Undergrounding In-Lieu Impact Fees.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Resolution No. 5976, Authorizing Applicants of Building Permits Submitted After July 1, 2005, but not yet issued, to take Advantage of Section 3.56.065 (Exemption from Fee Increase) Established by the Ordinance (Actions 1 and 2, above); and to Participate in the Revised City Deferral Program set forth by the Resolution in Action 3, above.*

City Manager Tewes said that by Council action, the Council has made it easier for staff to work with potential developers in assisting in what is considered significant cost to development impact fees. He informed the Council that many cities throughout the County and throughout the State have a comprehensive development impact fee system that is authorized by State law. The City's general plan states that the City needs to charge new development the cost of their impacts on the existing community to ensure that growth does not adversely affect the existing community. He acknowledged that impact fees increase the costs of development that affects the real estate market and has the

tendency to discourage certain types of development. He distributed to the Council staff's annual study where staff compares the impact fees the City of Morgan Hill charges with other cities in South County. He reported that notwithstanding the City's policy to require that new development fully mitigate its impacts, the City still has rates that are significantly lower than other communities in South County. He stated that staff is aware of the impacts associated with the impact fees on the incentive to develop in the community, while maintaining the policy goal of ensuring that new growth pays for itself.

25. KIDDY ACADEMY IMPACT FEE AGREEMENT AND DEFERRAL

Business Assistance and Housing Services Manager Maskell indicated that in February 2005, the Council authorized the City Manager to prepare an agreement with the owners of the Kiddy Academy building to be constructed at 15750 Monterey Road to allow the traffic impact fees to be calculated based on the number of children in the proposed childcare center. The fees were originally to be calculated based on the initial state license to be issued to the business. The assumption was that there would be approximately 70 children that would be cared for at the childcare center. She informed the Council that the agreement also required the building owner to pay additional fees for additional children beyond the initial start up phase. She indicated the state issues a license to a business based on the number of children that occupy the building. This can be up to 128 children, not 70 children. She indicated that the property owners and the operators of the Kiddy Academy are requesting the City remove the state license language from the impact fee agreement, and that the City base the initial fees on 84 children; the number of children they believe would be accommodated by the business. Staff is recommending that they be directed to develop a monitoring program to make sure that should there be additional children in the future, that the property owner or Kiddy Academy pay for the additional children in traffic impact fees.

Mayor Pro Tempore Grzan inquired if a precedent would be set by proceeding with staff's recommended action.

Ms. Maskell said that the traffic impact fee is an extraordinary high fee for a daycare. She did not believe there has been a new daycare center established since the last fee increase. She said that typically, staff calculates fees on building square footage. She acknowledged that traffic fees have not been based on this model, but staff felt this was an extraordinary situation.

Interim City Attorney Siegel said that there are two different ways to look at this situation. One is in the technical legal sense and whether someone can take the City to court requesting the same consideration. He noted the Council is looking at these specific circumstances and should the majority of the Council find this is a unique situation, a court would uphold the Council's decision. He also felt it would be unlikely the matter would ever get to court. He said that the use of the term "precedent" is used differently in terms of individuals stating the Council is not acting fairly. As a matter of policy, the Council may be creating a precedent. However, the Council is not taking an action that would be legally binding on this Council or any future councils.

Ms. Maskell noted the City has taken a similar action with sewer impact fees a number of years ago where public works monitored sewer impacts, and a company was charged accordingly. She informed

the Council that Kiddy Academy would like to participate on the recently adopted Impact Fee Deferral Program. She indicated that the deferral of the fees would be secured on real property.

Interim City Attorney Siegel said that the Impact Fee Deferral program just passed by the Council requires security be approved by the City's Risk Manager as well the City Attorney's Office.

Mayor Kennedy opened the floor to public comment.

Rose Chan, owner of Kiddy Academy Child Care Learning Center, thanked staff for their assistance on this issue. She felt the business provides good care and educational services to the children in the community. She said that she was surprised to receive the calculation of \$200,000 in traffic impact fees. This is a high amount of money to pay to start a small business. She indicated that the cost for the project is approximately \$800,000 and that adding \$200,000 to the use would result in a \$1 million project. She would need to charge parents more to offset the costs of the \$200,000 traffic impact fee; a disadvantage to new business and the community of Morgan Hill. She requested the Council reduce traffic impact fees and allow the deferral of the impact fees.

Ms. Maskell clarified that Ms. Chan would be paying impact fees based on 84 children. Staff would monitor the business. Should the business accommodate additional children, she would pay the incremental difference.

No further comments were offered.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Authorized** the City Manager to Modify the Terms of the Impact Fee Agreement for 15750 Monterey Road/Kiddy Academy to Base the Traffic Impact Fees on 84 Children.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Authorized** the Business Owners of the Kiddy Academy to Participate in the City's New Impact Fee Deferral Program, with Total Impact Fees Not to Exceed \$138,166.*

Redevelopment Agency Action

OTHER BUSINESS:

26. DISCLOSURE OF PROPERTY OWNERSHIP OR INTEREST BY REDEVELOPMENT AGENCY BOARD MEMBERS – Resolution No. MHRA-260

Agency Members Carr and Sellers excused themselves from participating on this item.

Interim Agency Counsel Siegel presented the staff report, indicating that Agency Members Carr and Sellers own property located within the Redevelopment Agency. He indicated that both own primary

residences within the Redevelopment Agency boundary; the only property they own within the boundary. He said that this is not an uncommon occurrence in Morgan Hill as a large number of residents live within the boundary. Assuming that the remaining members of the Agency find these disclosures acceptable, the Agency Board would make a motion to accept the disclosures and place them in the public record. At that time, Agency Member Sellers can return to the dais to participate in the consideration and vote on the second action, which is the consideration of the resolution attached to the staff report. As Agency Member Carr purchased his property in the Redevelopment Agency boundary after he was elected, there need to be findings made consistent with Redevelopment Agency law that stipulate that his property is in good shape, similar to other properties, and is not in need of Redevelopment Agency assistance. Assuming that the disclosures are accepted and the resolution is passed, Agency Members Carr and Sellers can rejoin the Agency Board and vote on item 27, a Redevelopment Agency action that would authorize the preparation of a second amendment to the Redevelopment Plan.

Chairman Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Agency Member Tate and seconded by Agency Member Grzan, the Agency Board, on a 3-0 vote with Agency Members Carr and Sellers absent, **Accepted** Disclosure of Property Interest Statements from Agency Members Carr and Sellers.*

Agency Member Sellers resumed his seat on the Dais.

Action: *On a motion by Agency Member Grzan and seconded by Agency Member Tate, the Agency Board, on a 4-0 vote with Agency Member Carr absent, **Adopted** Resolution MHRA-260, Certifying that No Work Needs to be done on Agency Member Carr's Residence.*

Agency Member Carr resumed his seat on the Dais.

27. REDEVELOPMENT PLAN AMENDMENT CONSULTANT

Business Assistance and Housing Services Manager Maskell presented the staff report on a request to contract with a consultant to amend the Ojo de Agua Community Development Project Area Plan. She informed the Council that the firm RFG prepared the preliminary study for the Agency to get to this point and that staff is recommending this firm be awarded the contract as their proposal fits more closely to what the City is looking for (e.g., conduct redevelopment agency workshops; community outreach; preparing notices, documents and reports required to amend the plan; look at blight within the community; conduct environmental review, including an environmental impact report (EIR); look at the financial implications, analyze different tax scenarios, etc.). She identified the timeline to proceed and costs associated with a plan amendment; including the addition of territory.

Chairman Kennedy opened the floor to public comment.

Marby Lee expressed concern with the state of affairs of the City and its budget problems. There are discussions underway to determine if additional fees are needed in order to maintain city services. Now the City is considering spending \$¼ million to pay a consultant to plan an amendment. She felt the public deserves justification for spending this amount of money when the City has such a crisis that city services may need to be cut. The City is talking to the community about increasing taxes in order to avoid service reductions. She felt that tax payers deserve an explanation and justification on why the City should pay this amount of money to a consultant.

No further comments were offered.

Executive Director Tewes said that City government is a large enterprise that includes many services. Most of the discussions to date have been about the City's general fund; the funds that provide basic city services [e.g., police and fire protection (81%), street & park maintenance, recreation]. This is the subject for the Community Conversation where the City's basic services are costing more than revenues available. He indicated that the Redevelopment Agency is a special state authorized agency that has the responsibility of eliminating blighted conditions in communities that inhibit private investments. He stated that in the 1980s, the City of Morgan Hill established a Redevelopment Agency in order to make the major investments seen today. He said that the Redevelopment Agency has assisted in the attraction of new businesses to the community that are spinning off tax benefits that help support the general fund. The Redevelopment Agency has made major investments in the downtown, including the establishment of the medians and a series of other improvements. He said the Redevelopment Agency has allowed the City to build important new public facilities that includes the Community & Cultural Center, and new streets and roads. It is a source of capital funds that can meet the community's needs, while addressing the blighting conditions of the community. He noted that the Redevelopment Agency will expire (ability to generate income) in January 2008 unless the Plan is amended. If the Plan is amended, there is an opportunity to gain, on average, approximately \$30 million annually in capital funds and funds to provide housing assistance to persons of low and moderate income in the community. The opportunity for a Plan amendment needs to be pursued in order to meet the significant needs in the community. He said there is no question that \$¼ million is a significant amount of money and that approximately \$78,000 of this cost is for conducting the environmental impact report. It is true that redevelopment is highly legalized, and under a lot of scrutiny. He stated that the City must follow a series of difficult procedural steps and make certain findings based on reports and facts that must be gathered throughout the process; having a series of check points with community input along the way. He acknowledged that this process is costly, but the benefits, if approved, are so significant that the investment of \$¼ million to amend the Redevelopment Plan for the opportunity to generate \$30 million annually for 10+ years is one that staff is prepared to recommend to the Council this evening. He clarified that the expense under this item is one of the Redevelopment Agency and not of the City's general fund. Therefore, these funds would not be taking away from resources that would otherwise go toward paying for core municipal services.

Agency Member Tate noted that under a separate item considered this evening, the Agency/City Council will be allowed to conduct business three times per month. He recommended that at the beginning of each agenda item, it be stated that the item is either a Redevelopment Agency or City Council item.

Action: *On a motion by Agency Member Tate and seconded by Agency Member Grzan, the Agency Board unanimously (5-0) **Authorized** the Executive Director to Execute a Contract with GRC Redevelopment Consultants, Inc., in an Amount not to Exceed \$250,800 to Perform all Work Necessary to Prepare the Second Amendment to the Redevelopment Plan for the Ojo de Agua Community Development Project Area, Subject to Agency General Counsel Approval.*

City Council and Redevelopment Agency Action

OTHER BUSINESS:

28. AMENDMENT TO TITLE 2, SECTION 2.04.010 OF THE MORGAN HILL MUNICIPAL CODE AND AMENDMENT TO THE AMENDED AND RESTATED BYLAWS OF THE REDEVELOPMENT AGENCY, ESTABLISHING REGULAR MEETING DATES – Ordinance No. 1762, New Series

Interim City Attorney Siegel presented the staff report; indicating that as part of the goal setting session, the City Council and Redevelopment Agency indicated its interest in standardizing when and how meetings are to be held. He stated that in order to change the meetings, the Council will need to adopt an ordinance and amend the Redevelopment Agency Bylaws. He said that the major reason for changing the meeting schedule is for adoption of ordinances; as ordinances cannot be adopted at special meetings. The action before the Council/Redevelopment Agency is to introduce an ordinance/amend the Bylaws that would authorize meetings to be held on the 1st, 3rd and 4th Wednesdays of each month for both the Council and Redevelopment Agency; all meetings to begin at 7 p.m. He informed the Council/Agency Board that staff is also recommending a text change that would cancel a meeting should the meeting fall on a holiday. Should staff find that there is a need for a meeting before the next regular scheduled meeting, it will come before the Council to request a special meeting be held.

Mayor/Chairman Kennedy opened the floor to public comment. No comments were offered.

Acting as City Council:

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1762, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1762, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 2.04.010 OF THE MUNICIPAL CODE, REGARDING THE TIME AND LOCATION OF THE COUNCIL MEETINGS**, by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

Acting as Redevelopment Agency Board:

Action: *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Approved** the Proposed Amendments to the Amended and Restated Bylaws of the Redevelopment Agency of the City of Morgan Hill.*

29. CITY COUNCIL/REDEVELOPMENT AGENCY UPCOMING AND SUMMER MEETING SCHEDULE

Council Services & Records Manager Torrez presented the staff report and requested City Council direction regarding upcoming and summer meeting schedule.

Council/Agency Member Sellers indicated that several cities do not meet during the month of August. He said that there are two advantages to not meeting during the month of August: 1) consistency so that the City organization, including the Council, has enough time to plan the year accordingly; 2) the Council would not have to go through the review of its summer meeting schedule every year; if this policy is adopted to state the Council will not meet in August. Adoption of the policy would formalize the actions the Council is already taking and would give reassurance to the Council in planning its schedule.

Action: *Council/Agency Member Sellers made a motion, seconded by Mayor Kennedy, to direct staff to return with a policy to stipulate the Council will not meet during the month of August.*

Council/Agency Member Tate indicated that he was uncomfortable in not having the capability of meeting during the month of August.

Council/Agency Member Sellers informed the Council/Agency Board that he contacted staff earlier today to find out if there were internal issues that the Council/Agency Board needs to deal with, or impacts to internal planning. He stated that staff indicated that they did not believe there were.

Council/Agency Member Tate understood the advantages to individuals with families who would like to schedule vacations, but expressed concern that an item may come up that would necessitate Council/Agency Board action.

City Manager/Executive Director Tewes said that as a general policy, canceling Council/Redevelopment Agency meetings during the month of August is feasible as there is always the opportunity to call special meetings, if necessary. He indicated that he wanted to insure that a milestone does not occur in August that would keep the City from achieving its objectives relating to the Redevelopment Plan adjustment. He stated that the month of August would end the environmental impact review process for the Plan amendment which does not require a Council meeting. He did not see any objections, on staff's part, to establishing a policy that the Council be dark in August as long as the Council has the ability to call a special meeting, if necessary. He noted that it has been the Council's practice to cancel the meeting on the 3rd Wednesday in August.

Mayor Kennedy recommended that staff return with a policy that would facilitate cancellation of meetings in August. Staff is to review the schedule to make sure the Council does not have a conflict at a future meeting.

Council/Agency Member Carr recommended the Council review other options such as canceling the first meeting in July as it is near the Fourth of July and the first meeting in August as a standard practice. This would give the Council two weeks in July and two weeks in August to go dark; and yet have the ability to conduct business, rather than going dark for a block period of time.

Council/Agency Member Tate stated his support of Council/Agency Member Carr's suggestion of canceling the first meeting in July and the first meeting in August. As an alternative, the Council could cancel the first meeting in July and cancel the first and second meetings in August; holding the third meeting in August.

Council/Agency Member Sellers stated his support of canceling the Council/Redevelopment Agency's first meeting in July and the first and second meetings in August.

Action: *Council/Agency Member Sellers amended the motion, seconded by Council/Agency Member Tate, to **cancel** the first meeting in July, and the first and second meetings in August. The motion carried unanimously (5-0).*

Council/Agency Member Sellers indicated that he would not be in attendance at the May 17 meeting. He inquired whether the Council wishes to consider canceling the May 17 meeting in light of the League of California Cities Legislative Trip to Sacramento.

Council/Agency Member Carr said that the Council/Agency Board needs to be careful in setting a policy where it would be canceling a set number of meetings throughout the year. He suggested the May 17 meeting is one the Council may wish to cancel in order to allow Council members to attend the Legislative Trip to Sacramento.

Council/Agency Member Tate noted that the Council would be meeting on May 19 in a workshop and that consent calendar items could be agendaized for that meeting.

Action: *On a motion by Council/Agency Member Carr and seconded by Mayor/Chairman Kennedy, the City Council/Agency Board unanimously (5-0) canceled its May 17, 2006 meeting.*

City Council Action (Continued)

OTHER BUSINESS:

30. OUTSIDE AGENCY ASSIGNMENTS

Council Member Carr addressed the assignments of the Public Safety & Community Services, the Community & Economic Development and the City School Liaison Committees. He indicated that he and Council Member Tate would serve on the City School Liaison Committee. He was not clear whether the Corporation Yard Commission would fall under the Utilities & Environment Committee or the Public Safety & Community Services Committee. He identified recommended appointments to the following committees: Emergency Preparedness Council - Tate; South County Housing, Community & Economic Development Committee - Carr; Library Joint Powers Authority - Tate; Community Health Foundation - Carr & Tate; Youth Empowered for Success/Youth Advisory Committee/Cornerstone Project - Tate; SCRWA – Utilities & Environment Committee; Parks & Recreation Commission Liaison - Carr; Library, Culture & Arts Commission Liaison - Tate.

Mayor Pro Tempore Grzan indicated that the Corporation Yard Commission would fall under the purview of the Utilities & Environment Committee (Grzan & Kennedy).

Council Member Sellers indicated that he spoke with Dan Ehrler today who indicated that the Chamber of Commerce is undertaking a series of bylaw amendments. He said that the last time the Chamber of Commerce reviewed their bylaws; the Chamber asked the Mayor to serve as the City's liaison. He said that the Chamber of Commerce would be reviewing the City liaison assignment. In order to align Council Committee assignments, the Chamber of Commerce liaison may or may not be the Mayor, depending on who is serving on the Community & Economic Development Committee. Therefore, the Council may wish to look at the Chamber liaison assignment to ensure that the assignment aligns with the Council's Committee structure.

Mayor Kennedy said that there are certain responsibilities the mayor has that would be appropriate, and that serving as the liaison to the Chamber of Commerce may be an appropriate role for the mayor to serve.

Council Member Sellers said that the Community & Economic Development Committee expressed concern with the lack of communication. He said that there are times when this Committee has not been fully apprised about Chamber of Commerce board meetings. He recommended the Council ask the Chamber of Commerce to accommodate two members of the Council serving in a liaison capacity.

City Manager Tewes informed the City Council that staff made an executive decision to align the League of California Cities Peninsula Division to the Financial Policy & Legal Affairs Committee as there were no assignments listed under this Committee. He clarified that it is the practice to have all elected members on City Councils participate in the Peninsula Division to the extent that members are able. He indicated that the League of California Cities has asked that each city appoint a liaison, therefore, this is a new assignment.

Council Member Tate noted that the Council has individuals assigned to the League of California Cities Peninsula Division.

Council Member Sellers referred to the Ad Hoc Governmental Committees and outside agencies. He noted that there were ad hoc committees listed and requested clarification.

Mayor Kennedy indicated that the Cities Association established these ad hoc committees last year. He said that the Utilities & Environment Committee can take on the South County Wastewater Regional Authority assignment.

Regarding the Peninsula Division liaison assignment, Council Member Carr indicated that the Council has a Committee in place that deals with regional issues. He felt the League of California Cities Peninsula Division is a regional body and should not fall under the Financial Policy & Legal Affairs Committee. He indicated that he could not find any outside assignments that fall under the purview of the Financial Policy & Legal Affairs Committee. However, he would not object to this assignment remaining with this Committee.

Council Member Sellers and Mayor Kennedy agreed that the Peninsula Division assignment would fall under the Regional & Transportation Committee. However, it was noted that this Committee is busy.

Mayor Kennedy supported placing the Peninsula Division liaison assignment under the Financial Policy & Legal Affairs Committee in order to spread the assignments.

Council Member Sellers addressed the Valley Transportation Authority (VTA) and the comments he made regarding the Mayor being inconsistent. Having spoken with several individuals involved with VTA, they reiterated the same concern. He indicated that he has academic and professional conflicts. Therefore, it would not be an option for him to be able to rotate and be the representative to the VTA. Further, it would disrupt the Council's committee structure should anyone other than the Mayor or he take on this assignment. He stated that he and Mayor Kennedy had a discussion about this assignment and some of the issues that raised concerns. He felt it made sense to have the Mayor serve as the VTA representative. In order to alleviate his concerns and those of others, he requested that there be closer communication between the Regional & Transportation Committee members. Further, that he, as the VTA Policy Advisory Committee (PAC) member, or Mayor Kennedy, as the VTA Board member, do not undertake any initiative without discussion at the Council Committee level. There should not be meetings with other groups without having communicated with the other committee member. He indicated that Mayor Kennedy will be representing three cities this year; however, the three cities do not always agree on items. He suggested that significant votes not be taken without having a Council vote. He noted that the other two cities represented by Mayor Kennedy on the VTA have an off year election this year. However, both Regional & Transportation Committee members have elections this year and it is not known who will be elected to office. He informed the Council that VTA precludes a Board member from serving as an alternate to PAC. He recommended that Council Member Carr serve as alternate to the PAC as he would be able to attend the meetings based on the time and location the meetings are held. He noted that Council Member Carr is not running for re-election this fall. This will provide assurance that Morgan Hill will have one Council member who would have some familiarity with VTA issues no matter what happens this fall.

Mayor Kennedy felt it would be appropriate for Council Member Carr to serve as alternate to PAC because he cannot serve as an alternate, serving as a board member. With respect to communication as a board member of VTA, he indicated that information and meetings are fluid. He said that major VTA

Board discussions are scheduled to take place on March 2. He said that presenting information to the Regional Planning & Transportation Committee is difficult as the meetings are not frequent enough to keep up with decisions and discussions taking place. He stated that his hands would be tied should he agree not to take action without receiving concurrence from the City Council. On the other hand, he felt it important that he not act unilaterally with respect to the major VTA scenarios (sales tax, BART, etc.). He noted that there are discussions being held that lead to the major VTA decisions. In order to get agreements in place requires discussions and meetings. He stated that it may be hard to keep the Council informed every step of the way.

Interim City Attorney Siegel said that the fact that Council Member Sellers and Mayor Kennedy serve on the Regional Planning & Transportation Committee does not override the ability for both members to discuss issues. He noted that the Council committees are not decision bodies. The committees bring items forward to the Council or other commissions. He indicated that conveyance of information between committee members is not in violation of the Brown Act; it is consensus building that may be a violation.

Council Member Sellers did not believe that conversations between Committee members would be on taking votes, but merely to update each other on meetings and discussions to be held. He felt there were inconsistencies in what is coming out from Morgan Hill. He felt the City of Morgan Hill needs to have a consistent message/direction. He recommended that he and Mayor Kennedy communicate regularly, yet maintain the regular committee structure.

Council Member Carr stated that the Committee may need to consider its meeting schedule so that issues are discussed in a timely manner before VTA board meetings are held. Should the Committee be split on positions, he felt the larger decisions need to come before the Council. Once the Council has its dialogue and it comes to an agreement on what is beneficial for Morgan Hill, and the Mayor represents this position, he would support Mayor Kennedy relaying this position at said meetings.

Mayor Kennedy noted that the Council will be discussing VTA scenarios on February 22 to indicate whether or not the Council supports the ¼ cent sales tax.

Action: *Council Member Sellers made a motion, seconded by Council Member Tate, to have the Regional Planning & Transportation Committee have close communications as VTA deliberations take place and that there be no major vote taken without a direction from the Council. The motion carried unanimously (5-0).*

Council Services & Records Manager requested that the Council review the outside assignments to ensure that staff has accurately reflected the appropriate assignments.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** the amendments to the Current List of Assignments and Appointments and Suggested Changes to the Mayor.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Mayor's appointments of Council Members to Outside Agencies as identified.*

Council Member Carr felt that the Morgan Hill Chamber of Commerce assignment falls under the purview of the Community & Economic Development Committee as their issues are economic development in nature. He felt it should be up to the Council to determine who would be its representative to the Chamber, and not allow the Chamber to decide who they want representing the City.

Mayor Kennedy noted that not all of the Morgan Hill Chamber of Commerce issues are economic development issues, but Chamber of Commerce issues as well. He noted that the Mayor plays a role at Chamber of Commerce events. Therefore, there would be an overlap of activities.

Council Member Sellers indicated that as chair to the Community & Economic Development Committee, he would make sure that the Committee reviews legal issues before sending a Council liaison to the Chamber of Commerce.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Directed** the City Clerk to Notify the Appropriate Agencies of Amended Assignments.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 10:55 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY



AGENCY STAFF REPORT

MEETING DATE: *March 1, 2006*

APPROVAL OF \$39,080 FOR INTERIOR DESIGN SERVICES TO SELECT INTERIOR FIXTURES AND FURNITURE FOR THE NEW LIBRARY.

RECOMMENDED ACTION(S): 1) Authorize the Executive Director to execute a consultant agreement with RMW Architecture & Interiors to provide interior design services necessary to select public and staff furniture and fabrics for the New Morgan Hill Library in the amount not- to- exceed \$39,080.

EXECUTIVE SUMMARY:

The progress to deliver the New Morgan Hill Library project remains on schedule. The project is out for construction bids and construction is projected to start in late April. The building envelope and all the interior finish selections are complete. Staff now wants to proceed with the selection of interior fixtures, furniture and equipment.

Staff contacted three interior design firms to provide this service. All the firms we received proposals from were equally qualified and had extensive library experience. Staff is proposing to proceed with RMW Architecture & Interiors because of their experience, convenient office location to Morgan Hill and their proposal was within the budgeted amount. Staff has negotiated an agreement with RMW. Exhibit A is a copy of the City's standard agreement approved by the consultant. Staff recommends authorizing the attached consultant agreement with RMW for the library interior furniture design, a crucial component to the successful completion of the project.

FISCAL IMPACT: No additional fiscal impact at this time. The project budget has an allocation of \$45,000 for these design services.

Agenda Item # 15

Prepared By:

Sr. Project Manager

Approved By:

**Special Assistant to
the City Manager
Submitted By:**

Executive Director



CITY COUNCIL STAFF REPORT

MEETING DATE: March 1, 2006

ACCEPT 2005-2006 SIDEWALK, CURB AND GUTTER REMOVAL AND REPLACEMENT PROJECT

RECOMMENDED ACTION(S):

1. Accept as complete the 2005-2006 Sidewalk, Curb and Gutter Removal and Replacement Project in the final amount of \$60,446.
2. Direct the City Clerk to file the attached Notice of Completion with the County Recorder's office.

EXECUTIVE SUMMARY:

The contract for the 2005-2006 Sidewalk, Curb and Gutter Removal and Replacement Project was awarded to JJR Construction, by the City Council at their November 16, 2005 meeting, in the amount of \$60,446. The project resulted in the removal and replacement of 3,006 SF of sidewalk, 98 LF of curb and gutter, 2 driveway approaches, 2 handicap access ramps, and asphalt concrete patching on Crest Avenue between Wright Avenue and Main Avenue, see attached spreadsheet for location.

The work has been completed in accordance with the plans and specifications.

FISCAL/RESOURCE IMPACT:

This project is budgeted in the 2005-06 Street Maintenance Budget. The allocated project construction cost including a 10% contingency was \$60,475. The contract was awarded in the amount of \$54,975 and the final contract price is \$60,446.

Agenda Item # 16

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

Record at the request of
and when recorded mail to:

CITY OF MORGAN HILL
CITY CLERK
17555 Peak Avenue
Morgan Hill, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 27383

NOTICE OF COMPLETION
CITY OF MORGAN HILL
2005-2006 Sidewalk, Curb and Gutter Removal and Replacement Project

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the Civil Code of the State of California, that the Director of Public Works of the City of Morgan Hill, California, on the 1st — day of March, 2006, did file with the City Clerk of said City, the contract for performing work which was heretofore awarded to JJR Construction, on November 16, 2005, in accordance with the plans and specifications for said work filed with the City Clerk and approved by the City Council of said City.

That said improvements were substantially completed on February 1, 2006, accepted by the City Council on March 1, 2006, and that the name of the surety on the contractor's bond for labor and materials on said project is Great American Insurance Company.

That said improvements consisted of the construction and installation of all items of work provided to be done in said contract, all as more particularly described in the plans and specifications therefor approved by the City Council of said City.

Name and address of Owner: City of Morgan Hill
17555 Peak Avenue
Morgan Hill, California

Dated: _____, 20__.

Jim Ashcraft, Director of Public Works

I certify under penalty of perjury that the foregoing is true and correct.

Irma Torrez, City Clerk
City of Morgan Hill, CA
Date:



CITY COUNCIL STAFF REPORT

MEETING DATE: *March 1, 2006*

ZONING AMENDMENT: ZA-05-28 OAKHILL-SPERA

RECOMMENDED ACTION(S):

1. Open/Close the Public Hearing
2. Waive the first and second reading of the Ordinance
3. Introduce Ordinance (roll call vote)

EXECUTIVE SUMMARY:

A request to amend Section 18.56.150 of the Minor Exceptions Chapter of the Municipal Code to allow minor additions while maintaining existing non-conforming heights under specific findings. If approved, the amendment would allow staff to consider a minor exception request for the additions to the single family home located in the Jackson Oaks RPD at 3455 Oak Hill Ct.

Unlike other residential developments in the City, each lot in Jackson Oaks is assigned a specific setback and height limitation. The method of measuring the building height for the Jackson Oaks differs from how height is currently measured elsewhere in the City. Building heights in Jackson Oaks are measured from the top of the roof relative to the ground elevation at the centerline of the street at the high point of the lot. Building heights elsewhere are measure from the average ground elevation at the front of the building to the top of the roof. At times during the development history of Jackson Oaks, the building height requirement wasn't enforced or measured per the Jackson Oaks development plan. As a result, the existing two story structure at 3455 Oak Hill Court exceeds the building height limit as specified in the Jackson Oaks RPD zoning. Many of the other homes in the Jackson Oaks neighborhood were not built per the specific height limitations. Any minor additions or alterations to those existing homes would require a change to the RPD Development Plan.

The proposed Zoning Amendment would establish a minor exception to allow this home as well as other homes located in an RPD the opportunity to make minor alterations or additions maintaining existing non-conforming heights, as long as specific findings can be made that the additions would not significantly impact view corridors. The amendment would not legalize non-conforming heights, but would make the process of each owner currently having to gain approval for a remodel or addition less burdensome. Staff would process each minor exception request on a case by case basis and allow neighboring property owners the opportunity to express their concerns to the planning staff.

The Commission considered the Zoning Amendment at the February 14, 2006 meeting and voted 7-0 to recommend approval. The Commission's staff report and draft minutes are attached for Council's reference.

FISCAL IMPACT: None. Filing fees were paid to the City to cover processing of this application.

Agenda Item # 17

Prepared By:

Assistant Planner

Approved By:

**Community
Development Director**

Submitted By:

City Manager

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO SECTION 18.56.150 OF THE MINOR EXCEPTIONS TO ALLOW MINOR ADDITIONS WHILE MAINTAINING EXISTING NON-CONFORMING HEIGHTS. (ZA-05-28: OAKHILL-SPERA)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. Section 18.56.150 B.7. of the Morgan Hill Municipal Code is amended to read as follows:

18.56.150 Minor Exception

B 7. Height for Residential Planned Developments (RPD). In any RPD district where the existing height of a residential dwelling was not constructed according to the RPD building height standard, the community development director may authorize building additions maintaining the existing nonconforming building height. Such additions may be approved where necessary to significantly improve the site plans or architectural design, and where scenic views or solar access for surrounding properties are not significantly affected.

SECTION 4. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 5. Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the Day of March 2006, and was finally adopted at a regular meeting of said Council on the Day of March 2006, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of March 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: *March 1, 2006*

Agenda Item # 18

Prepared By:

Planning Manager

Approved By:

**Community
Development Director**

Submitted By:

City Manager

GRANT “THIRD YEAR” RESIDENTIAL BUILDING ALLOTMENTS AND DISCUSS STATUS OF A FALL 2006 RDSCS COMPETITION

RECOMMENDED ACTION(S):

1. Adopt Resolution approving third year residential building allotments into fiscal year 2009-10
2. Determine that there will be no Fall 2006 RDSCS Competition, and that awards of 2009-10 allotments to on-going open/market projects will be considered by the Council in June 2006.

EXECUTIVE SUMMARY: On February 14, 2006, the Planning Commission approved the award and distribution of building allotments under the City’s Residential Development Control System for affordable, small vertical mixed use projects and open/market rate residential projects in the Downtown for Fiscal Years 2007-2008 and 2008-09. The approved distributions are consistent with the guidelines established for the competitions by the City Council.

On December 7, 2005, the City Council voted to authorize the Planning Commission to award allotments into FY 2009-10 as needed to complete projects. The Commission was given authority to award from 108 to 193 allotments from 2009-10, as needed to complete projects; based on specific findings, and with attention to 2009-10 opportunities for On-going Projects, and flexibility to determine not to award to all passing projects. On February 14, 2006, the Commission voted 7-0 to recommend that 166 “third year” allotments be awarded to seven downtown projects and one affordable project as shown in the attached Exhibit “A.” In addition, the Commission is recommending that five fiscal year 2009-10 allotments be reserved for a separate micro and small project competition and the remaining 2009-10 allotments be distributed to On-going projects that are located outside of the Downtown. Staff recommends the 2009-10 allotments to be awarded to On-going projects be deferred until May or June after new Department of Finance population estimates are released and the actual available building allotment for FY 2009-10 can be determined. If fewer allotments are available, then the final distribution to On-going projects can be adjusted accordingly.

The Planning Commission did not award allocations to the last place (Application MC-05-10: E. First -Shiraz) downtown project. Although the City Council awarded this project a qualifying score on appeal, the Commission determined that any attempt to include all of the qualifying projects in the distribution will require taking additional allotments away from the higher scoring Ahlin project that would negatively affect the feasibility of that project. As a next in line project, the Shiraz development would be eligible to receive an allocation that may become available should a higher scoring project not be able to proceed. In addition, the City Council is considering a November 2006 ballot measure to “exempt” downtown units from Measure C. As the Shiraz project did not receive any fiscal year 2007-08 or 2008-09 allotments, the Council does not have the authority to grant fiscal year 2009-10 allotments to the Shiraz project, as that would be a “start” of a project.

Staff and the Planning Commission recommend approval of the third year allotments by adoption of the attached Resolution. Because all of the available allotments for FY 2008-09 have been awarded, no competition needs to be conducted this Fall. A competition will likely need to be conducted in September 2007 for a small and micro project competition to award the estimated 5 remaining FY 2009-10 allotments and perhaps the fiscal year 2010-11 allotments.

FISCAL IMPACT: No budget adjustment required

EXHIBIT A

Approved Distribution of Building Allocations FY 2007-08/2008-09 & Recommended Distribution for FY 2009-10

	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY2009-10</u>	<u>TOTAL</u>	
<u>MICRO/COMPETITION:</u>					
<i>MMC-04-09: Taylor-Murray</i>	2	3		5	
Unallocated:			5	5	
<u>SMALL COMPETITION:</u>					
<i>MC-04-17: San Pedro-Alcini</i>	4	8		12	
<i>MC-04-27: Wright-Dividend</i>	9			9	
<u>OPEN MARKET COMPETITION:</u>					
<i>MC-04-03: Glenrock</i>	15	15		30	
MC-04-04: Diana – Chan	13	5	14	32	
MC-04-12: E. Dunne - Dempsey	5	8	14	27	
<i>MC-04-13: Barrett – Odishoo</i>	5	13		18	
<i>MC-04-14: Central – Hu</i>	5	15		20	
MC-04-19: E. Main – Thrust	5	8	9	22	
MC-04-21: Barrett-Syncon Homes	13	5	14	32	
MC-04-22: So. Valley Developers	13	15	14	42	
<i>MC-04-25: Lupine Investors</i>	6	12		18	
MC-04-26: Mission Ranch	15	15	14	44	
<u>VERTICAL MIXED USE:</u>					
	<u>Score</u>				
MC-05-04: Sherman	173.5	7		7	
MC-05-12: The Granary	168	12		12	
MC-05-03: Gunter	164	4	10	15	
<u>AFFORDABLE COMPETITION:</u>					
MC-05-02: So Co Housing	181.5	54	41	95	
MC-05-09: Urban Housing	159.5		12	37	49
<u>DOWNTOWN OPEN MARKET:</u>					
MC-05-05: Alcini	178.5	30		30	
MC-05-08: EAH	177.5		10	70	80
MC-05-06: Ahlin	174	50	43	6	99
MC-05-11: Glenrock	165.5		14	43	57
	Totals	<u>260</u>	<u>250</u>	<u>250</u>	<u>760</u>

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AND GRANTING THIRD YEAR ALLOTMENTS FOR PROJECTS AWARDED RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) ALLOTMENTS IN THE FISCAL YEAR 2005-2006 AFFORDABLE, SMALL VERTICAL MIXED USE AND DOWNTOWN OPEN/MARKET RATE COMPETITIONS.

WHEREAS, pursuant to Resolution No.5888, the City Council has authorized allotments to be awarded to new residential projects in separate Affordable, Small Vertical Mixed Use Project and Downtown Open/Market Rate Competitions to be held in Fiscal Year 2005-06; and

WHEREAS, in October 2005, the Planning Commission received eleven project applications requesting residential building allotments pursuant to Chapter 18.78 of the Morgan Hill Municipal Code; and

WHEREAS, on February 14, 2006, the Planning Commission adopted Resolutions approving the award and distribution of the building allocations in the above competitions for Fiscal Year 2007-08 and Fiscal Year 2008-09; and

WHEREAS, on February 14, 2006, the Planning Commission also recommended that certain projects awarded a building allotment receive approval to phase a portion of their building allotment into a third fiscal year;

WHEREAS, pursuant to Section 18.78.125(f) of the Morgan Hill Municipal Code, the City Council has the authority to approve phasing of building allocations into a second or third year;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CITY OF MORGAN HILL THAT:

SECTION 1: The City Council finds that awarding residential building allotments into a third fiscal year is necessary in order to complete specific downtown projects as follows:

A. Application MC-05-09: Central Urban Housing: The project was awarded a partial building allotment for 12 dwelling units in fiscal year 2008-09. The total project consists of 49 dwelling unit that are contained in a single building. The one building project cannot be phased and will require 37 allotments in fiscal year 2009-10 in order for the project to be built. Using the City Council's early start of construction policy, the project can be built as a "single phase" development.

B. Application MC-05-03: Monterey – Gunter: The project was awarded a partial building allotment for 5 dwelling units and will require 10 building allotments to complete the project fiscal year 2009-10. This small project would not be economically feasible unless a full allotment was awarded allowing the project to be completed.

C. Application MC-05-08: Diana – EAH: This project was awarded a partial building allotment for 10 dwelling units in fiscal year 2008-09. This project uses a podium type of construction with basement level parking and residential units above and therefore must be

constructed in a single phase. The project will require 70 allotments in fiscal year 2009-10 to complete the project. Using the City Council's early start of construction policy, the project can be built as a "single phase" development.

D. Application MC-05-06: E. Main – Ahlin: This project was awarded a partial building allotment for 93 units. The project applicant provided testimony at the February 14, 2006 Planning Commission that a building allotment equal to a minimum of 99 dwelling units will be necessary for the project to secure construction financing. The project will require 6 building allotments in fiscal year 2009-10 for the development to proceed.

E. Application MC-05-11: E. Third – Glenrock: This project was awarded a partial building allotment for 14 units in fiscal year 2008-09. Due to higher costs of public improvements, including contribution toward the cost of a Third Street promenade, the project would not be able to proceed without assurances of being able to recover those public improvement cost by being able to complete the project in a second year. This project will require 43 building allotments in fiscal year 2009-10 for the development to proceed.

SECTION 2: Pursuant to Section 18.78.125(F), the Council hereby approves the third year phasing of the new residential projects as set forth in the attached exhibit "A." The additional allocation awarded to these projects shall be subtracted from the limited allotment authorized under Measure C for the 2009-2010 Fiscal Year.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 1st Day of March, 2006 by the following vote.

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

☪ CERTIFICATION ☪

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on March 1, 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT "A"

THIRD YEAR DISTRIBUTION

FISCAL YEAR 2009-2010

Affordable Competition:

MC-05-09: Central – Urban Housing	37
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Small Vertical Mixed Use Project Competition:

MC-05-03: Monterey - Gunter	10
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Downtown Open Market Competition:

MC-05-08: Diana – EAH	70
MC-05-06: E. Main – Ahlin	6
MC-05-11: E. Third – Glenrock	43

Total	<u>166</u>
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CITY COUNCIL STAFF REPORT

MEETING DATE: MARCH 1, 2006

DEVELOP CITY COUNCIL POSITION REGARDING PROPOSED VALLEY TRANSPORTATION AGENCY QUARTER-CENT SALES TAX TO SUPPORT LONG- TERM TRANSIT CIP EXPENDITURE PLAN

RECOMMENDED ACTION(S):

1. By motion, determine whether the City's position will be to support or to not support the proposed quarter-cent sales tax measure.
2. Discuss Recommended VTA Quarter Cent Sales Tax Scenario Expenditure Plan, and provide direction to the City's VTA Board Representative regarding the scheduled March 2, 2006 VTA Board of Directors vote on the proposed Plan.

EXECUTIVE SUMMARY:

At its January 25, 2006 meeting, the Council discussed the proposed VTA quarter-cent sales tax scenario and associated expenditure plan and chose to defer taking a position on the matter. This item was considered again at the Council's February 22, 2006 meeting with a decision to further postpone any decision until March 1st to allow for more clarity to be reached on another related sales tax proposal. The Santa Clara County Board of Supervisors will hear a proposal to place a half-cent sales tax measure on a June 2006 ballot at their February 28, 2006 meeting.

The current VTA proposal calls for funding the entire 2000 Measure A transportation program along with certain new projects in their expenditure plan. However, the VTA plan relies on added revenue from a future quarter-cent sales tax measure that must be passed by the voters. The City of Morgan Hill has not taken a formal position regarding whether or not it supports the quarter-cent sales tax ballot measure.

As stated above, the Santa Clara County Board of Supervisors will consider a half-cent sales tax measure at their February 28, 2006 meeting. The VTA Board of Directors will consider their proposed quarter-cent sales tax measure at their March 2, 2006 meeting. Should any new information be received pertaining to the sales tax issues prior to this meeting, it will be distributed to the Council members.

FISCAL/RESOURCE IMPACT:

Successful passage of the proposed measure will affect the level of transit services provided in South County, and increase currently available funding for our Pavement Maintenance and regional roadway construction projects.

Agenda Item # 19

Prepared By:

**Deputy Public Works
Director**

Approved By:

**Public Works Department
Director**

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MARCH 1, 2006

BALLOT MEASURE FOR A JUNE 6, 2006 SPECIAL ELECTION

RECOMMENDED ACTION(S):

1. Review the Issues Regarding the Potential Removal of the Restriction of Grocery Supermarkets at Cochrane Plaza in Morgan Hill;
2. Direct Staff Regarding Calling for A Special Election.

Should the Council Support Calling for a June 6, 2006 Special Election, then:

3. Approve Negative Declaration;
4. Adopt Resolution Calling for a June 6, 2006 Special Election;
5. Adopt Resolution Requesting Consolidation of the June 6, 2006 Special Election; and
6. Adopt Resolution Regarding Written Arguments.

EXECUTIVE SUMMARY:

There are a number of issues in front of the City Council this evening regarding the potential removal of the restriction on Grocery Supermarkets at Cochrane Plaza in Morgan Hill Ranch. The first issue for the City Council to consider is the approval of the environmental review for this project. As you likely recall before the City Council can place the Initiative on the ballot an environmental review must be conducted. As set forth in the attached memo from Terry Linder, a Negative Declaration was prepared and circulated. To date no comments have been received on the Negative Declaration. If the environmental review/negative declaration is not approved by the City Council, the Initiative may not be placed on the ballot.

The second issue is, if and only if the environmental review is approved, then the City Council may decide whether to place the Initiative on the June 2006 ballot. As discussed at December 14, 2005, City Council Meeting based on the information that the County provided the City Attorney and City Clerk estimate that the cost of placing the Initiative on June 2006 ballot will be approximately Forty Nine Thousand Dollars (\$49,000). The County reports that the cost of placing the Initiative on the November 2006 ballot will be approximately the same, although if there are multiple municipal ballot measures on the November 2006 ballot the cost might be reduced by \$5,000. Please remember that these are only approximations and we will not know the final cost of the election until the County bills the City after the election. As the deadline for placing an Initiative on the June 2006 ballot is March 10, 2006, the City Council must decide tonight whether to place the Initiative on the June 2006 ballot. Attached to this staff report is the Resolution placing the revision of the Ordinance on the June 2006 ballot. The attached Resolution has been revised to include the comments and suggestions made by the City Council at the February 1, 2006 meeting.

Third, if the City Council places the Initiative on the June 2006 ballot, the City Council and registered voters of Morgan Hill need to be aware of the deadlines for submitting ballot argument and rebuttals. The list of operative dates provided by the County is attached. The list also shows the dates for the November 2006 ballot. If the Initiative is placed on the June 2006 ballot the ballot arguments pro and con are due on Friday, March 10, 2006, and the rebuttals are due on Wednesday, March 15, 2006. The City Council should provide direction to staff as to whether the City Council or a designee of the City Council will be preparing a ballot argument. It is essential to remember that while the City Council or individual City Council member may take a position on an Initiative (or differing positions), City funds cannot be used to campaign for or against the Initiative.

FISCAL IMPACT: Should the Council Call for a Special Election to be held on June 6, 2006, the Council will need to appropriate approximately \$50,00 from the General Fund Balance into the Elections Budget (010-2420-42231) to cover the costs associated with a Special Election.

Agenda Item #20

Prepared By:

Interim City Attorney

Approved By:

City Attorney

Submitted By:

City Manager

RESOLUTION NO. (CALLING SPECIAL ELECTION)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA CALLING AND GIVING NOTICE OF THE HOLDING OF A SPECIAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, JUNE 6, 2006 FOR SUBMITTAL TO THE VOTERS OF A BALLOT MEASURE TO REVISE ORDINANCE NO. 835, NEW SERIES TO ELIMINATE THE PROHIBITION ON GROCERY SUPERMARKETS IN THE MORGAN HILL BUSINESS PARK.

WHEREAS, Measure B was approved by the citizens of Morgan Hill at a special election held on September 22, 1987; and

WHEREAS, Measure B amended the City of Morgan Hill's General Plan to provide for the establishment of a new commercial services standard and amending the Planned Unit Development Agreement established by Ordinance No. 545, N.S., and related development plan for the Morgan Hill Business Park; and,

WHEREAS, the City Council of the City of Morgan Hill put Measure B into affect on October 9, 1987 in the adoption of Ordinance No. 835, N.S.; and

WHEREAS, the City Council of the City of Morgan Hill would like to submit a ballot measure to amend Ordinance No. 835 N.S. that would amend the Morgan Hill Business Park PUD (located at the southwest corner of Cochrane Road and Highway 101) to permit grocery supermarkets to locate within the Cochrane Plaza Shopping Center; and

WHEREAS, the City Council of the City of Morgan Hill, California, finds that lifting the restriction that prohibits grocery supermarkets at Cochrane Plaza Shopping Center will enhance the economic viability by expanding the types of permitted use; and

WHEREAS, as Ordinance No. 835 N.S. may only be changed by a vote of the citizens of Morgan Hill; and

WHEREAS, under the provisions of the laws relating to general law cities in the State of California, a Special Municipal Election shall be held on Tuesday, June 6, 2006, for the submittal of such a ballot measure to the voters.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DOES RESOLVE AS FOLLOWS:

SECTION 1. Pursuant to the requirements of the laws of the State of California relating to General Law Cities, there is called and ordered to be held in the City of Morgan Hill, California, on Tuesday, June 6, 2006, a Special Municipal Election for the purpose of submitting to the voters a ballot measure to amend the General Plan Land Use category and commercial services standard of the Morgan Hill Business Park PUD to permit grocery supermarkets within the Cochrane Plaza Shopping Center.

SECTION 2. The City Council of the City of Morgan Hill has considered the proposed Negative Declaration together with comments received during the public review process, and the Negative Declaration is hereby adopted based upon finding, on the basis of the whole record, that there is no substantial evidence that the project will have a significant effect upon the environment, and that the Negative Declaration reflects the City Council's independent judgment and analysis; and

SECTION 3. Pursuant to the requirements of the State of California, at the Special Municipal Election on Tuesday, June 6, 2006, the following question shall be submitted to the voters:

Do the Citizens of the CITY OF MORGAN HILL, CALIFORNIA ordain that Ordinance 835 N.S. Section II A. 2, regarding the portion zoned PUD-Commercial of the Morgan Hill Business Park, specifically the existing Cochrane Plaza shopping center, be amended to remove the prohibition on grocery supermarkets and to add grocery supermarkets as a permitted use?	YES
	NO

and

SECTION 4. The ballots to be used at the election shall be in the form and content as required by law.

SECTION 5. That the polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, except as provided in §14401 of the Elections Code of the State of California.

SECTION 6. That the City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 7. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 8. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 9. If, at the election, a majority of the votes cast on the measure are in favor of

the measure, then the measure shall be deemed accepted and approved by the qualified voters of the City

SECTION 9. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the ___ day of _____, 2006 by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

ATTEST:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

🦉 CERTIFICATION 🦉

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council at a Regular Meeting held on _____, 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

RESOLUTION NO. (CONSOLIDATING ELECTION)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA TO CONSOLIDATE A SPECIAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, JUNE 6, 2006, WITH THE STATEWIDE PRIMARY ELECTION TO BE HELD ON THE DATE PURSUANT TO § 10403 OF THE ELECTIONS CODE.

WHEREAS, the City Council of the City of Morgan Hill called a Special Municipal Election to be held on Tuesday, June 6, 2006, for the purpose of the election of submitting to the voters the questions relating to Revising Ordinance No. 835, New Series, to Eliminate the Prohibition on Grocery Supermarkets in the Morgan Hill Business Park; and

WHEREAS, it is desirable that the Special Municipal Election be consolidated with the Statewide Primary election to be held on the same date and that within the city the precincts, polling places and election officers of the two elections be the same, and that the county election department of the County of Santa Clara canvass the returns of the Special Municipal Election and that the election be held in all respects as if there were only one election;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of § 10403 of the Elections Code, the Board of Supervisors of the County of Santa Clara is hereby requested to consent and agree to the consolidation of a Special Municipal Election with the Statewide Primary election on Tuesday, June 6, 2006, for the submittal to the Voters of a Ballot Measure.

SECTION 2. That a measure is to appear on the ballot as follows:

Do the Citizens of the CITY OF MORGAN HILL, CALIFORNIA ordain that Ordinance 835 N.S. Section II A. 2, regarding the portion zoned PUD-Commercial of the Morgan Hill Business Park, specifically the existing Cochrane Plaza shopping center, be amended to remove the prohibition on grocery supermarkets and to add grocery supermarkets as a permitted use?	YES
	NO

SECTION 3. That the county election department is authorized to canvass the returns of the Special Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

SECTION 4. That the Board of Supervisors is requested to issue instructions to the county election department to take any and all steps necessary for the holding of the consolidated election.

SECTION 5. That the City of Morgan Hill recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs.

SECTION 6. That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the county election department of the County of Santa Clara.

SECTION 7. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the ___ day of _____, 2006 by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

🔒 CERTIFICATION 🔒

I, **IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. ____, adopted by the City Council at a Regular Meeting held on _____, 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

RESOLUTION NO. (WRITTEN ARGUMENTS)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, SETTING PRIORITIES FOR FILING WRITTEN ARGUMENTS REGARDING A CITY MEASURE AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS.

WHEREAS, a Special Municipal Election is to be held in the City of Morgan Hill, California, on Tuesday, June 6, 2006, at which there will be submitted to the voters the following measure:

Do the Citizens of the CITY OF MORGAN HILL, CALIFORNIA ordain that Ordinance 835 N.S. Section II A. 2, regarding the portion zoned PUD-Commercial of the Morgan Hill Business Park, specifically the existing Cochrane Plaza shopping center, be amended to remove the prohibition on grocery supermarkets and to add grocery supermarkets as a permitted use?	YES
	NO

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That the City Council authorizes

_____	(Council Member In Favor)	_____	(Council Member Against)
_____	(Council Member In Favor)	_____	(Council Member Against)
_____	(Council Member In Favor)	_____	(Council Member Against)
_____	(Council Member In Favor)	_____	(Council Member Against)
_____	(Council Member In Favor)	_____	(Council Member Against)

members of that body, to file (a) written argument(s) in Favor or Against regarding the City measure as specified above, accompanied by the printed name(s) and signature(s) of the **author(s)** submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California and to change the argument until and including the date fixed by the City Clerk after which no arguments for or against the City measure may be submitted to the City Clerk.

Anyone may submit, in conformance with State law, Primary Arguments on this ballot measure which shall be submitted to the City Clerk by 5:00 p.m. on March 10, 2006. Anyone may submit, in conformance with State law, Rebuttal Arguments which shall be submitted to the City Clerk by 5:00 p.m. on March 17, 2006. (Irma then please fill in the dates).

The arguments shall be filed with the City Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument. The arguments shall be accompanied by the Form of Statement To Be Filed By Author(s) of Argument.

SECTION 2. That the city council directs the City Clerk to transmit a copy of the measure to the city attorney, unless the organization or salaries of the office of the city attorney are affected. The city attorney shall prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure. If the measure affects the organization or salaries of the office of the city attorney, the city clerk shall prepare the impartial analysis. The impartial analysis shall be filed by the date set by the City Clerk for the filing of primary arguments.

SECTION 3. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the ___ day of _____, 2006 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

ATTEST:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

🏛️ CERTIFICATION 🏛️

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council at a Regular Meeting held on _____, 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT
MEETING DATE: March 1, 2006

Agenda Item # 21

Prepared/Approved
By:

Council Services &
Records Manager

Submitted By:

City Manager

MARCH 15, 2006 CITY COUNCIL MEETING

RECOMMENDED ACTION: Direction Regarding March 15, 2006 City Council Meeting

EXECUTIVE SUMMARY:

At the Council's February 22, 2006 meeting, the Council reviewed its upcoming meeting schedule. Staff was not clear about the Council's March 15, 2006 meeting. Addressed at the February 22 meeting was the fact that two of you would not be in attendance at the March 15 meeting. It was suggested that the Council may wish to cancel this meeting, if it is a light meeting. Items could be carried over to the Council's meeting of March 22, 2006, if necessary. Staff requests direction regarding the Council's March 15, 2006 meeting.

FISCAL IMPACT: Preparation of this staff report is accommodated in the Council Services & Records Manager's operating budget.